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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CUNG LE, et al.,	)	
	)	
Plaintiffs,	)	Case No. 2:15-cv-01045-RFB-PAL
	)	
vs.	)	Las Vegas, Nevada
	)	June 1, 2017
ZUFFA, LLC, d/b/a Ultimate Fighting Championship and UFC,	)	STATUS CONFERENCE
	)	
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS

THE HONORABLE PEGGY A. LEEN,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES: See Next Page

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LAS VEGAS, NEVADA; THURSDAY, JUNE 9, 2017; 9:32 A.M.

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P R O C E E D I N G S

COURTROOM ADMINISTRATOR: Your Honor, we are now calling Le versus Zuffa, LLC. The Case Number is 2:15-cv-1045-RFB-PAL.

Beginning with plaintiffs' counsel, counsel, state your names for the record.

MR. CRAMER: My name is Eric Cramer from Berger and Montague for the plaintiffs.

MR. DELL'ANGELO: Good morning, Your Honor. Michael Dell'Angelo from Berger and Montague on behalf of the plaintiffs.

MR. SAVERI: Good morning, Your Honor. Joseph Saveri, San Francisco, California, on behalf of the plaintiffs.

MR. WEILER: Good morning, Your Honor. Matthew S. Weiler, San Francisco, California, also on behalf of plaintiffs.

MR. SPRINGMEYER: Good morning, Your Honor. Don Springmeyer, Wolf Rifkin, on behalf of the plaintiffs.

MR. MAYSEY: Good morning, Your Honor. Robert Maysey from Warren and Angle on behalf of plaintiffs.

MR. WILLIAMS: Good morning, Your Honor. Colby Williams, Campbell and Williams, on behalf of the defendant, Zuffa, LLC.

MS. GRIGSBY: Good morning, Your Honor. Stacey Grigsby

from Boies Schiller and Flexner on behalf of Zuffa.

MR. WIDNELL: Good morning, Your Honor. Nicholas A. Widnell of Boies Schiller and Flexner on behalf of Zuffa, LLC.

MR. NAKAMURA: Good morning, Your Honor. Brent Nakamura also on behalf of Defendant Zuffa, LLC, from Boies Schiller Flexner.

MS. LYNCH: Good morning, Your Honor. Marcy Lynch from Boies Schiller and Flexner on behalf of Zuffa, LLC.

MR. KELLY: Good morning, Your Honor. Phil Kelly from Kendall Brill and Kelly on behalf of Nonparty Bellator Worldwide.

THE COURT: We have a lot of ground to cover this morning and multiple matters on calendar. So obviously your request for a status conference, Docket No. 393, was granted. I originally set this for May 18th, but vacated it and reset it when incoming additional papers were filed so that everything could be resolved that is current. And, of course, since then there's been more incoming.

I have read all of the moving and responsive papers, including everything that was filed up through yesterday. So I'm prepared to proceed.

We're going to proceed in the following order. I'm going to first hear argument from Nonparty Bellator on its motion to quash, and plaintiff has the flip-side of that motion which is a motion to compel. And I'm not going to hear three

sets of arguments, responses, and replies. So I'll have counsel for Bellator make its arguments. Counsel for plaintiff will go next and respond. Counsel for Zuffa will follow, and then Bellator gets the last words.

So, again, I have read your moving and responsive papers, but this is your opportunity for oral argument.

Let me just tell the parties a little bit of -- you can approach the lectern. Having reviewed all of these matters, the voluminous papers that accompany the motions, I don't really have an issue with respect to the timing -- the timeliness of your motion to quash. The subpoena was served a long time ago. The parties have been engaged in extensive negotiation back and forth. It appears that you have produced a substantial amount or agreed to produce a substantial amount of material, and you've honed down the disputes among the parties here to two categories of information, basically event-level profit and loss statements and event-level fighter compensation. And so I really don't have an issue with respect to timeliness, and I don't need to hear oral argument about that.

I also don't have an issue with respect to whether Bellator has met its burden of showing that the documents that are in dispute in this motion to quash and the plaintiffs' countervailing motion to compel are sensitive financial and commercial information; to which you are ordinarily entitled to protection; and that of course one of the parties that seeks

this information is a competitor. The law's pretty clear the burden then shifts to the party seeking the information to show substantial need.

So what I need to hear from Bellator is there is a protective order governing confidentiality in place. It was amended precisely for the benefit of Bellator and others from whom the parties are seeking discovery in this case. It would limit the dissemination of this information to outside counsel and experts. And why isn't an attorneys' eyes only strict limitation adequate?

And, two, I appreciate -- fully appreciate your arguments with respect to burden. You're not arguing that production of the materials in this case is unduly burdensome in the sense that it will be too time consuming or expensive to locate and produce the documents the parties seek. Rather, what you are arguing is that the nature of the protective order and the necessity for justifying documents being sealed on an ongoing basis is unduly burdensome, and the time frame for complying with your burden's unduly or your obligation as the party seeking protection is unduly burdensome, and there is no protection at trial.

So I will tell you, to me, it is -- the latter issue is relatively easy to address because I can and will give you a standing order deeming that you have initially met your burden of showing that the documents are sensitive and may be -- any

documents that you produce are pursuant to attorney's eyes only, may be sealed, and shifting the burden to any party seeking to unseal to initiate any process and give you an opportunity to weigh in.

So those are just -- having looked at all of this in some detail, I want to let you know what I'm thinking about so that you can tailor your arguments accordingly.

MR. KELLY: Thank you very much, Your Honor. And I want to start by saying I appreciate the flexibility with the hearing date. That really helped me out personally. And I appreciate the guidance so that I can cut through a fair amount of this.

I do want to address the substantial need test, which I know is the party's burden, but what I really want to focus on is the scope of the requests and the substantial burden -- substantial need showing that has been made. You indicated that there are two categories, and that's right. One is event-level financials, and then there are substantial need showing; their saying why they're saying they need event-level financials.

What the requests actually call for is something far detailed -- far more detailed than just event-level financials. They're seeking every scrap of paper related to five or six categories of expenses, five or six categories of revenues, for every fight that Bellator has promoted in its nine-year history throughout the world. We're talking hundreds of fights here.

They haven't made --

THE COURT: First of all, you don't have to worry about throughout the world because the lawsuit is limited to the punitive class, and the lawsuit allegations are limited to the United States or in the alternative to North America.

MR. KELLY: Well, that's not a limitation that exists in the request for production. I appreciate that that's -- would be one narrowing.

The plaintiffs' showing of substantial need, and I'm just going to read from their opposition brief, consists of the following: Bellator's financial information is clearly relevant to plaintiffs' claims in the underlying litigation. Plaintiffs raise the issue of Bellator's financial performance in the CAC. Accordingly, Bellator's financial information is clearly relevant. Plaintiffs have substantial need for this information in order to prove claims made in the CAC regarding Bellator.

That's completely circular. It's unsupported by any evidentiary support. There's not a declaration from one of the parties. There's not a declaration from an expert.

Zuffa, on the other hand, did offer a declaration from an expert. And on the financial issues his declarations offers justifications or substantial need for financial information generally. What he hasn't offered and can't offer, I submit, is substantial need justification for each and every event P&L, each and every event expense, revenue. What he's asking for is

information that will help him determine market-entry barriers, growth of Bellator over time, whether Bellator's been able to compete profitably. All of that information can be provided in other ways besides event-level detailed financial information.

And, by the way, let's not forget that Zuffa has two requests related to financial information. One is the event-level financials. The other is, Oh, by the way, if that doesn't cover everything, we also want in as granular level as exists every other financial document related to the operations of Bellator's business. That, I submit, is wildly overbroad, and they haven't even tried to offer substantial need for that.

The -- there is a way -- first, I don't think any financial documents should be produced or substantial need hasn't been shown. The expert offers fairly cursory explanations as to why substantial need, but it's not tied to elements of the case that they need to prove or defend. And the standard for substantial need is that it's essential to trying its case, and I don't think they've met that burden.

The next category is unredacted fighter contracts and all negotiations related to fighter contracts. We have offered to provide within whatever category the parties want to define it anonymized exemplar contracts. In other words, we redacted --

THE COURT: So let me -- I understand that.

MR. KELLY: Okay.

THE COURT: So let me ask you a few questions about that.

MR. KELLY: Great.

THE COURT: Does Bellator have essentially an exemplar contract that it uses with filling in the blanks with different numbers or does it tailor individual fighter contracts based on a variety of business factors?

MR. KELLY: Bellator has a standard form contract that is used as a starting point and for many, many fighters. And there are other situations where specific terms are negotiated in or out of certain fighter contracts. And what we'd be willing to do is provide the negotiated final contract without names or identifying information.

THE COURT: For all of your fighters?

MR. KELLY: Well, I don't think we should have to do it for all of them. We're talking every fighter that Bellator's ever signed in its nine-year history. I think that's vastly overbroad. But we can --

THE COURT: So tell me how many that is so I have a clue.

MR. KELLY: Excuse me?

THE COURT: Tell me approximately how many that is so I have a clue.

MR. KELLY: It's in the hundreds. I don't have an exact number for you over the history. And Bellator has

undergone significant changes over time. Completely different management now than it had when it started, and ownership. And so, you know, some of the older documents will be more difficult. Again, I'm not here to make an undue burden argument.

Bellator's a, you know, significant company and it's owned by Viacom. They can throw resources at it, if necessary, but there will be some difficulty in tracking down older documentation.

But what we'd be willing to do, because I understand there are arguments regarding different levels of fighters, is to provide anonymized samples within whatever categories they tell us. You know, we don't need to decide that. They can tell us --

THE COURT: Well, I understand from your papers one of the issues that you had with them is neither side is willing to define who an elite fighter is for purposes of their request.

MR. KELLY: Well, I don't know that we ever got to that point. I think the plaintiffs agreed that this would be an acceptable approach. Zuffa never agreed to meet and confer. And from our standpoint, unless they both agreed, doesn't do us any good.

But, to me, for purposes of the substantial need test, what they actually need to be able to defend or prove their case, the anonymized contracts, which, by the way, one of the

arguments they say they need the names is so that they can see if there are extensions or cancellations. We can provide that anonymously. We can provide: Here's a set of Fighter A that has his contract, any extension, any cancellation. The name -- they don't need to have the name. And the concern --

THE COURT: Right, they don't need to link the specific contract terms with the specific athlete to know what your terms are --

MR. KELLY: That's exactly right, Your Honor.

THE COURT: -- is what you're telling me.

MR. KELLY: And the anonymized contract -- I've been through Mr. May's declaration. You can solve all of his concerns with anonymized contracts if you provide the sequential --

THE COURT: Right, and that was my point about whether there was any definition of clue note because they want to find -- if I understand what the parties are saying is they want to -- they need the names because they need to compare apples to apples to see if your fighter -- your anonymous fighter is on par with a UFC fighter in terms of the compensation package and terms.

MR. KELLY: I think the reality of this is, is these -- we're not -- we're talking about fighters who are either Bellator fighters or UFC fighters. And I'm not sure that there's a way to say Bellator fighters --

THE COURT: Is better than your guy, yeah.

MR. KELLY: Yeah.

THE COURT: And you provided a list of all of your fighters, correct?

MR. KELLY: We provided a list of our fighters, yes.

And certainly, you know, if they wanted to provide, you know, some sort of -- out of these 10 fighters, we need example contracts for, you know, five of them or six of them and it can be anonymous, then we're okay with that because that at least provides us some level of protection. Obviously this is a horrible situation for Bellator to be in to -- we're being asked to turn over our most confidential and sensitive information to not only the biggest competitor out there, but to the fighters who we negotiate against. And in either hands it could be potentially devastating to Bellator, and CEO Scott Coker has submitted a declaration laying that out in detail.

And, by the way, Mr. Coker, I believe the parties have agreed, is going to be deposed and --

THE COURT: I was going to get to that. So you're not going to resist having his deposition taken. What you are resisting is the level of detail that both sides are seeking in this case and linking names with compensation packages.

MR. KELLY: That's exactly right, and the detailed financial information. But we're okay with Mr. Coker being deposed. And, frankly, we'd prefer them ask the questions of

Mr. Coker than us turning over documents that are -- you know, that contain all of this information.

And I think the vast majority, if not everything they want, they can get from Mr. Coker in terms of, you know, barriers to entry and growth of Bellator over the years and the events that have been successful and haven't been successful, profits and loss, you know, whether Bellator's been profitable. They can get that from Mr. Coker. And I think that is a sufficient backstop such that they don't need all of the documents that they're seeking here.

Frankly, I don't think they need any of them beyond maybe anonymized contracts. And, you know, Bellator does not want to, but in a worst-case scenario would be willing to provide high-level monthly/quarterly financial statements. It would not contain information about every single fight, but that is something that Bellator is willing to do, if absolutely necessary. It doesn't solve the problem that, you know, Zuffa's expert, plaintiffs' expert, and all of the lawyers now have a road map to Bellator's business and how its growth is going.

And the concerns that we have -- we're not concerned that the lawyers here are going to, you know, whisper to the parties what happens, but there are a number of issues that we have to deal with. And I'm not sure the protective order, which you raised as an issue, is sufficient.

The information that Bellator provides is going to be

used in an expert report. I'm not sure how that expert report, unless it is also marked as attorneys' eyes only --

THE COURT: That's precisely my question. How are they ever going to be able to use the information without effectively disclosing it?

MR. KELLY: That's our concern. And it may not be, you know, Here are Bellator's numbers in an expert report, but it's going to say, Bellator has been able to grow or Bellator is profitable --

THE COURT: This is what you've done right and this is what you've done wrong in the opinion of the expert.

MR. KELLY: That's exactly right.

THE COURT: And this is why you're not competitive or this is why you are competitive.

MR. KELLY: That's right. And same thing with the fighters. If they want to compare fighters, you know, Bellator fighter compared to this fighter, they're disclosing our information. And I don't see a way that the expert report can be done in a way that doesn't disclose, if not the very specifics, the substance of the information.

And, to me, that's a very significant concern. And from Bellator 's standpoint we don't see how you get around that, which effectively is releasing our information not only to the parties, our competitor and the people we contract against, but to the public.

THE COURT: Of course they accuse you of doing exactly that in the District of New Jersey in connection with the Alvarez litigation.

MR. KELLY: Sorry? I missed that.

THE COURT: Perhaps, you weren't privy to that. That's exactly what Zuffa accused you of doing in New Jersey in the Alvarez litigation you filed there.

MR. KELLY: I was not involved in that one. I honestly don't know the details of it, but I understand that there has been a fight going on or was a fight going on there.

It's -- I mean --

THE COURT: Do you have any ongoing litigation with Zuffa?

MR. KELLY: I don't believe so, Your Honor, but perhaps one of the other counsel here would know better than I.

The other issues we have with the protective order is it's effectively drawing Bellator into this case, not directly, but we now have to monitor every deposition that happens, every motion that's being filed. And I appreciate the blanket order of sealing, but --

THE COURT: Well, it wouldn't be a blanket order. It would be an order that you've made the specific finding with respect to the attorneys' eyes only materials then shifting the burden to any party seeking to unseal.

MR. KELLY: Which means if somebody wants to unseal,

Bellator has to be here to fight it.

THE COURT: Correct.

MR. KELLY: And there the other issue is trial. And I'm not sure if Your Honor would be able to address that. I know the parties have indicated a willingness to --

THE COURT: I don't presume to tell the district judge how to handle his case, so ...

MR. KELLY: Right. And so, you know, I think the parties are willing to address that in some way, but sitting here today I have no -- there's no solution. My client is facing full disclosure of its most confidential and sensitive information at trial to its competitors and to the public, and that's just not acceptable to us. And I don't think -- you know, in any situation where one competitor is being asked to disclose -- by the way, not involved in the case at all being asked to disclose its most confidential commercially-sensitive information to others, there have to be limitations on that. I think the Court's recognized that.

The -- the final point that I want to make about the harm and the burden is there are confidentiality provisions in, for example, the fighter agreements and in the agreements we have with vendors and sources of revenue and expenses. All of those people would have to be contacted, told that their agreements are going to be produced, and at least in theory those people could show up and assert a privacy right to, you

know, preclude that particular document from being produced.

I think that's going --

THE COURT: Of course, that's true any time information is produced in any litigation anywhere in the country that contains a confidentiality provision. I mean, that's what we do.

MR. KELLY: I understand. But from a burden standpoint, and I know some of the parties have had this -- raised this as their own issue, if we have hundreds of agreements to people we have to notify before producing them, I mean, it's doable, but that is a -- you know, that is a point of burden.

I just don't think -- certainly from the plaintiffs' standpoint, I don't think they have come close to meeting the substantial need test based on the papers that they've submitted. And I don't believe that Zuffa has shown a substantial need to anything more than the anonymized contract and at best summary financial information.

The details that they've asked for go far beyond what their --

THE COURT: You're objecting to event-level profit and loss information, but you're willing to provide, if you absolutely have to, quarterly financial information in broad categories that gives them what they need.

MR. KELLY: That's right, Your Honor.

THE COURT: Thank you.

MR. KELLY: Thank you.

THE COURT: Who will be arguing on behalf of the plaintiffs?

PLAINTIFFS' COUNSEL: Mr. Weiler.

MR. WEILER: Good morning, Your Honor. Matthew S. Weiler on behalf of the plaintiffs.

I think at the outset I want to take a step back here and talk about substantial need in connection with the elements that the plaintiffs have to prove I think our case here. This is a Sherman Act Section 2 case. It's about markets. It's about market power. It's about --

THE COURT: But your punitive class is only -- only consists of people who have fought for UFC.

MR. WEILER: That's correct. And plaintiffs have alleged there's no competition -- there is no competitor, right? It's Zuffa. And everybody else is the minor leagues, right. But we have to prove that. The plaintiffs have to prove that. And there are material allegations. There are material allegations such as Zuffa controls 90 percent of the revenue in the sport of MMA. We need detailed -- we need detailed --

THE COURT: Why do you need event-level detailed information if you have aggregate information that you know how many fighters they have. You've reached an agreement with respect to information you need in the vast majority of the 15

broad areas requested in the subpoena duces tecum, and you've reached an accommodation with respect to sponsors, vendors, and broadcasters.

Why do you need to know what every one of their fighters makes and what every one of their fighter contracts says linked to the name as opposed to the anonymous contracts that don't identify the fighter, but identify the terms and their compensation package and things like the duration that you're concerned about?

MR. WEILER: Well, let's back up a second here, Your Honor. We're -- the issue is that we need to have an apples-to-apples comparison. A Bellator fighter with X amount of experience gets X amount of dollars. A UFC fighter with Y amount of experience gets Y amount of dollars. The contracts themselves won't necessarily tell you that. How it works in the MMA industry is that compensation is something that's, as Mr. Kelly said --

THE COURT: Or it might indicate that some fighters have better agents and lawyers that negotiate better terms.

MR. WEILER: Sure.

THE COURT: I mean, if you have the aggregate information and you know who the fighters are, why do you need to know what each fighter makes in order for you to analyze whether Zuffa has precluded any competition or precluded people who want to fight from being fairly compensated?

MR. WEILER: Well, we need to be able to -- we need to be able to show on a fighter-by-fighter basis that --

THE COURT: You keep saying, "We need to know," and now I want to know why you need to know because I don't see it.

MR. WEILER: Well, because we need to compare -- we need to compare the compensation. We need to compare the compensation that fighters at Bellator -- this can be anonymized. We don't need to know their names. We can just know their experience and how much they get per bout. They can say, you know --

THE COURT: Can't you find that information out from the information you have received or will receive?

MR. WEILER: No, no, no, no. Your Honor, we cannot. We do not know what the fighter compensation of Bellator's fighters are. We do not know that. We do not know their expenses.

If -- I mean, we provided Your Honor examples of the information, the financial information, and I'm sure Your Honor --

THE COURT: Right. But now you've heard counsel, kicking and screaming. They would agree to offer quarterly financials in categories to give you more information.

MR. WEILER: Well, they -- I mean, we could negotiate within those parameters. We would certainly want to know what all of the fighter compensation is.

THE COURT: You've had 15 months or more to negotiate. We're here to resolve this right now. So now we're getting down to the brass tacks.

MR. WEILER: Okay. Well, let's -- it -- Your Honor, it's insufficient to have this information in summary form. That's the bottom line.

THE COURT: I get why it's -- what you've got so far is not particularly helpful.

MR. WEILER: We're going to have disputes about, you know, whether certain fighters from Bellator should be considered in the same market as fighters from Zuffa.

THE COURT: This is why I started off asking, your definition of an elite fighter for purposes of the consolidated amended complaint is any professional MMA fighter who has demonstrated success through competition in local and/or regional MMA promotions or who has developed significant public notoriety among MMA industry, media, and consuming audience through demonstrated success in the athletic competition. Why isn't that information that you and Zuffa both have?

MR. WEILER: Well, Zuffa -- I think what Zuffa is going to try and do is going to try and say, Hey, look, these Bellator guys are just as elite. They're -- you know.

THE COURT: Right, which is why I'm telling you -- because your clients know what the industry is. Zuffa knows what the industry is. You know who Bellator's fighters are.

MR. WEILER: But we need to know the revenue-weighted value of these fighters. We need to know the revenue-weighted value of these fighters, and in order to do that, we need to know what their compensation is. We don't need to know who they are. We can accept, for example, they've had five fights at either UFC or Bellator, right, and they get this amount. And they can be fighter 1, fighter 2, fighter 3, fighter 4. That's fine. We're not looking to expose to the world what these fighters make. We understand the importance of keeping that information confidential.

And when these reports -- when these expert reports are generated, they will be under -- they will be under seal, and they will be make summary conclusions about the market, about market power, right, about Zuffa's market power. That is going to be the ultimate -- it is going to be the ultimate conclusion, and it's going to be more about Zuffa and the UFC than it is going to be about Bellator. We're certainly not going to disclose what any of these -- what any of these people made, what any of these fighters made, in those reports. It's not going to say, you know, This Bellator star gets this much compared to this Zuffa guy. That's not how it's going to be. It's going to be summary. It's going to be summary conclusions about market power and also about foreclosure, right.

And it's critical to have the fighter -- this is a monopsony case. It's all about how much fighters get paid --

how much they should get paid, right. You've got to compare, for example --

THE COURT: I get your argument in this case is that Zuffa's effectively by what it's done and how its conducted its business and how it's acquired and how it ties up sponsors, blah, blah, blah -- I'm not trying to be disparaging in that, but I've heard the long train of abuses many times before.

MR. WEILER: Sure.

THE COURT: Because of what Zuffa does, they're really the only game in town.

MR. WEILER: That's right.

THE COURT: And that's your theory of this case.

MR. WEILER: That's right. And this evidence -- and this is evidence we need to prove -- to prove those allegations. We need the detailed financials.

And, Your Honor, if I could just go back to the requests that we're talking about here so that we're all on the same page.

I heard Mr. Kelly get up here and say, They're looking for every scrap of paper about every financial term, every this, every that.

THE COURT: He was referring to Zuffa's catchall, if you didn't give us everything in certain requests, then give us everything in granular form.

MR. WEILER: Okay. But from the plaintiffs'

perspective, we're looking for documents sufficient to show, and P&Ls, spreadsheets, these types of things would be sufficient to show. A spreadsheet with anonymized fighter compensation, this amount of experience, this is what their compensation is.

And, again, just to back up. You can't get this -- you can't get this from looking at the contracts. The contracts may not have the side agreements that, you know, are a big part of this industry, right. They will not necessarily have the fight agreements. We need to know -- or will not have the side agreements. We need to know what the total compensation for these fighters were in order to do a revenue-weighted valuation of Bellator's fighters to know if any of them, if any of them, right, are in the same category as UFC's fighters.

And I just I want to address, Mr. Kelly said, Hey, you can just -- you can just depose Mr. Coker and get this information. No CEO that I've ever met has, you know, the detailed -- you know, the details of, hey, what's the fighter compensation with respect to --

THE COURT: No, he's going to give you the big picture about what he gets paid and what he does and how his business is successful. It's not he agrees that he's a competitor or he doesn't. He agrees that his fighters are well paid or he doesn't. He's going to give you the broad strokes. I get that.

MR. WEILER: Absolutely right. He's not a CFO or somebody like that. So it's not a substitute for the

information that plaintiffs seek.

And I just wanted to point out with respect to this argument that there are NDAs or there are other agreements that prevent certain types of information from Bellator being disclosed, with respect to the financial data that we seek, I'm just going to say, look, that's hearsay. There's no -- they have not produced any contract that says, We cannot provide a granular level fighter compensation or revenue -- revenue for our business for one reason or another because of such an agreement. There's nothing in the record like that. And this -- the representations that are being made here are broad. They're not specific.

And even if they had such an agreement, even if they had such a contract, we have a protective order here. We have a protective order here that says this is attorneys' eyes only. And so business competitors and people like that are not going to see these documents. Lawyers, lawyers are. That's how -- that's how this is going to work.

THE COURT: Lawyers and experts.

MR. WEILER: What's that?

THE COURT: Lawyers and experts.

MR. WEILER: Lawyers, yes, and experts and economists. They are not people who are going to go and compete with the people of Bellator or Bellator's business partners.

And so -- and I just wanted to -- I can't -- you know,

there was -- there was some discussion I think earlier this morning about, Well, why didn't plaintiffs submit an expert, you know, declaration or something like that. Your Honor, the Todd versus Tempur Sealy case, which is one of the cases that, you know, we cited in our papers, I think it says that the disclosure of who the experts are and what their methodologies and strategies would be, especially at a preliminary stage before the expert reports are due, is work product. It would be disclosing plaintiffs' work product.

I'm happy to address any questions that Your Honor has about the strategy or broadly speaking, you know, how it relates to the legal elements. But those are arguments that should come from counsel in our view; not from our experts who have not been disclosed and who of course would be cross-examined on representations that they made weeks before the reports were complete.

And when -- and with that, Your Honor, I think -- unless you'd like to go over the financial information that they've given us, it's --

THE COURT: I understand you need more than what you got.

MR. WEILER: Okay. Unless Your Honor has any other questions, I think that's all I have.

THE COURT: No, I've pretty much been skewering you as we've gone along.

So all right. Let me hear -- who will be arguing on behalf of Zuffa?

MR. WIDNELL: Good morning, Your Honor. Since this is the first time I'm speaking before you, I thought I'd just reintroduce myself. I'm Nicholas Widnell with Boies Schiller and Flexner. Before working at my current firm, I worked in the Federal Trade Commission. I think that may be relevant to some of the questions that are related to how you protect expert reports. And so I bring that up just in that context.

I want to be as brief as I can here. I know that you have a lot that you want to cover and need to cover today. So let me start by just making one quick note. I believe Your Honor had suggested that we would not need global information because the plaintiffs have alleged a U.S. or North American market. I don't think that's entirely accurate because Zuffa will want to argue that it is in fact a global market. So we do believe that --

THE COURT: You think it's relevant to your defense that the market isn't just the United States and North America. The market is global.

MR. WIDNELL: Precisely. I think that there are a number of important competitors --

THE COURT: But, mind, I have read some of the exchanges that your clients have produced in this case in connection with other motions.

MR. WIDNELL: Okay. Thank you, Your Honor.

The -- based on what I've heard today, I think it sounds like sort of two central issues at least in terms of need would be, one, the anonymity point which we are arguing, and we have a unique position on that. And then, second, the financial information, the event-level financials information.

Let me start with the anonymity point. I think that the reason why we don't believe anonymity if you put it into different categories works is because there would be so many categories that we would effectively be identifying the fighters. So it seems to us like it's somewhat pointless.

THE COURT: If you get what you want.

MR. WIDNELL: Well, I think the reason why we think that's important is because we don't believe that there is a clearly defined elite professional MMA fighter category, and we think that --

THE COURT: That's been an argument since your motion to dismiss in this case.

MR. WIDNELL: Exactly. But there are so many different characteristics that we believe can have a relevant effect in terms of compensation that fighters get; not just weight class; but obviously things like notoriety which are very hard to measure that by the time you actually identify categories that account for that, I think we've basically identified all of the fighters.

So our issue with the categorization point isn't that we wouldn't be prepared to do it. It's just that we think that by the time we identify what we think the relevant categories are we're going to hear back, This is just -- this is asking for detail that lets you identify the fighters. And I think that's right. So rather than me sort of engaging in that exercise we think it's better to just point head on.

The relevance for us in terms of the information we're asking about specific fighters isn't just related to the market, however. It's also really necessary for us to put in context a lot of the points that plaintiffs are making about what Zuffa has done.

THE COURT: You say that in your papers and I wasn't sure what you meant by it. Do you need the information to contextualize the plaintiffs' allegations?

MR. WIDNELL: Happy to talk about that.

So there are a number of different allegations, and they're all occurring over time. And allegedly all of those sort of bad acts that plaintiffs are alleging give Zuffa monopoly power which it then exercises their really monopsony power to harm fighter compensation.

So among the various bad acts are things like contractual provisions and how those contractual provisions are enforced by Zuffa.

THE COURT: You're talking about fighter compensation

packages because you've got the information from them on broadcasters, venues, sponsors.

MR. WIDNELL: Yeah. No, I don't think that any of those matter. I think we're really just focussed on fighter contracts and the provisions of the fighter contracts. But how those provisions are actually used by another entity that we believe at least is a competitor of ours is relevant to looking at whether or not there are procompetitive justifications for the clauses that we have in our contracts.

So, you know, take the -- take the champions clause. Is it justifiable? Well, if we can show that Bellator uses the champions clause in much the way that we do, unless Bellator is also an monopolist, it would suggest that there's a legitimate business justification for having that clause. But we can't make those kind of determinations without having really granular data about how the contracts are applied by Bellator.

You know, duration is another key point, and it's just our own efforts to kind of track the duration of contracts with our fighters that suggested that it would -- again, it would be very difficult to get that information on a fighter-by-fighter level for Bellator without giving us -- you know, and knowing the context, the time when it happened, when they were applying these different durations to different fighters without effectively having the kind of information that would permit us to identify all of the fighters.

So a lot of the types of behavior that we are allegedly engaged in that is allegedly leading to us becoming a monopolist, we think it's really important to be able to understand the extent to which entities that we believe at least are competitors are engaging in that exact same behavior.

THE COURT: The everybody-else-does-it defense?

MR. WIDNELL: So in the context of monopolization, we have a right to say that for the acts that we are engaged in that there's a procompetitive reason for doing it. That's, you know, not completely established by the fact that everyone else in the industry is doing it as well, but that is a relevant factor in assessing that issue.

So, again, I mean, I completely understand the concerns about confidentiality. I think that we're prepared to do whatever we possibly can to -- to ensure that confidentiality and we can talk about that, but we don't know of a way for us to be able to evaluate how Bellator is compensating its fighters, how it's negotiating with these fighters, without having fighter-level detail. And we don't know of a way to do that realistically and practically in a way that it can be anonymized without missing relevant characteristics we think are important to understand the interaction between Bellator and its fighters.

So I think one other point that we had discussed -- and again, you know, we -- we're happy to try and find ways to make this work, but we had also asked for the fighter negotiations.

And that, again, is important for us to understand how Bellator negotiates with its fighters. There are a number of things that we believe are -- plaintiffs are alleging are bad acts --

THE COURT: I can't imagine a competitor that wouldn't want to know that.

MR. WIDNELL: Well, just to be clear, we will not share this with our client. This is -- these are the attorneys trying to put together an antitrust defense.

THE COURT: But you tell me you effectively want enough information to give to your experts so you can build a complete model of Bellator's operations of business development prospects.

MR. WIDNELL: And that's essentially an antitrust analysis. You know, that is important both for assessing prior industry and for assessing competition. And, you know, our economists will build that model, but they are not going to be sharing that with our client, or we're happy to concede that point. It's -- this isn't about sharing information with our client at all. This is about developing the best defense for our client facing a fairly significant potential liability, at least as plaintiffs are describing it.

Event-level information for financial information, I think you've already heard about it, but just one other point that I think is really important from our perspective. Plaintiffs need to establish not just that we obtained monopoly

power. That in and of itself is not a violation. They have to show that our bad acts actually lead to an increase or a maintenance of that monopoly power. And to do that, they need to be able to show that there was an impact from the alleged bad acts, and these alleged bad acts, as we've said, are occurring over a long period of time.

For us to be able to refute those claims, it's important for us to be able to see what the actual impact on a company like Bellator is from the various alleged bad acts that plaintiffs are alleging.

So we can't do that effectively with just quarterly financial reports, especially when some of the allegations are things like, you know, that we deliberately tried to interfere with one of their events.

THE COURT: You scheduled another event 10 miles or 15 miles down the road on the same night.

MR. WIDNELL: So obviously we -- we have issues about whether or not those were, you know, actually attempts to impact Bellator's -- Bellator's events, but the allegations are out there. And for us to be able to address what the potential impact is, we need to be able to have event-level information. And at least, you know, there is testimony right now in the record from various deponents that in some cases scheduling that event 10 miles down the road actually improves, you know, at least TV ratings for both --

THE COURT: It's the anchor store theory.

MR. WIDNELL: Yeah. I mean, I can tell you that, you know, there are some people who have said, We think it's a bad thing to --

THE COURT: Of course, but I'm still struggling. If you have the quarterly and you know who all of the fighters are and you know what all of their events are because that's all public information, why you can't effectively figure it out? You know, why do you need fight-by-fight event-by-event data to analyze whether in a certain quarter in which there were five fights you likely did or didn't engage in bad contact -- conduct for lack of --

MR. WIDNELL: So imagine a situation where -- and I'm not using a specific example or a specific allegation, but imagine an argument that we did something to impede Bellator's ability to put on a specific event. With the quarterly information, we might see that, you know, that there was actually a drop for that quarter, but we have no way of knowing whether that drop is because they had other bad events that had nothing to do with us or whether that --

THE COURT: Well, that's what I'm questioning. You know what those events were. That's not ...

MR. WIDNELL: But we don't have the -- we don't have the financial results of those events to assess. We just have an aggregate of those. So you have three events. One of them,

you know, we've allegedly, you know, impeded, and two of which we have not. You know, the sum of those three events could be the result of two really bad performances for the ones that we aren't alleged to have impeded and a really good result for the event that we're alleged to have impeded, or it could be vice versa.

We need to at least understand how that works if the plaintiffs are going to be able to make the allegation that we've somehow impacted Bellator adversely by impeding a specific event. That's the easiest example for looking at this.

But more importantly, you know, to the extent that we see that there are issues where Bellator has done well or Bellator has done badly and we're tracking that against the alleged, you know, violations and the many alleged violations that have occurred, it's important for us to be able to try and do some kind of measurement that is more granular than just a quarter-by-quarter basis because we're missing, you know, what happens from event to event.

And this is an industry that's characterized by wild swings in terms of how events do. So, you know, one really poor event could explain a lot of what's happening to Bellator in a particular quarter, but if we don't know that that's a poor result for that event, there's no way for our economist to assess that.

So I think -- I think beyond those two points I'll just

say, I mean, I -- you know, I think that we've said in our brief and we stand by the position that we'll do any reasonable -- or we'll agree to any reasonable accommodation to protect the confidentiality of Bellator's information. We completely agree that this is highly confidential information that should not be allowed out to the public or shared, even with our client in this instance. In fact, there's potential antitrust risks for our client simply in seeing that information.

That said, the expert report part of this, you know, it is certainly the case in -- and I speak from personal experience with government cases -- antitrust cases that you can have expert reports where certain portions are redacted to address this concern. The government routinely gathers information from third parties like this and incorporates that into expert reports in litigation. And I'd be happy to --

THE COURT: It can be done, but it's not an easy chore.

MR. WIDNELL: That's right, but it's something that, again, we're prepared to make any reasonable accommodations. Start with basic assumptions to make this much simpler and, you know, we'll do whatever we can on the response.

THE COURT: Thank you.

MR. WIDNELL: Thank you.

THE COURT: And, Mr. Kelly, you get the last word.

MR. KELLY: Thank you, Your Honor.

Couple of quick points. I want to start by just saying

that the way that the parties have gone about this I think has created the problem. They've gone about this by asking for every piece of data about finances, every single fighter contract, every negotiation. Their justifications and their substantial need are a bit here, a bit there, we need a little bit here. They should have asked us for the specific documents that we needed and the parties could have tried to reach some accommodation on that, but that's not where we are. We spent 15 months trying to negotiate with them, and we didn't make a dent in either of these categories.

And to justify a broad-sweeping request for production of the most sensitive documents by saying, Well, there's a substantial need for this one fight -- for P&Ls for this one fight because we're alleging a counter-programming against that, that's not sufficient to give them everything. If they wanted to identify the five fights where they are alleged to counter-program and find out what happened with that fight, that would be a different story.

The expert issue is -- and I think you raised it. I mean, you quoted from their expert declaration what they want to do. They want to create a model to recreate not only where we have been, where we're going, and how we got there. I mean, that's -- that is -- you know, and I think we say in our brief in any other context that's industrial espionage. And we're talking about, you know, in the context of an antitrust case.

It's ironic to me sitting here that because we're in discovery in an antitrust case they're entitled to a vast amount of information that would enable them to engage in anticompetitive behavior.

THE COURT: It occurs in patent cases, for example, in which, you know, somebody says you're infringing my patent, and you get access to the source code of your opponent because it's proof of whether or not there is --

MR. KELLY: But we're a nonparty here. We're not even a party to this case.

THE COURT: No, that part I understand.

MR. KELLY: And the -- the argument that, Oh, our expert report will just be in summary form, you know, I mean, every lawyer here is highly competent and has lots of experience. An expert report that's only in summary form is probably not going to be what's in a case of this magnitude. There's going to need to be details, backup support, tables, documentation for all of that. And I just don't see how Bellator's information stays out of that report.

THE COURT: One of the plaintiffs' proposals was with respect to fighter compensation is an anonymous spreadsheet that does not identify the fighter, but identifies the compensation with such things -- categories of information as the duration of the contract and the fighter's experience or number of bouts.

MR. KELLY: I don't believe that anything like that

exists, Your Honor, but --

THE COURT: You'd have to create it, right.

MR. KELLY: I mean, that's certainly better from Bellator's perspective than turning over -- you know, basically opening up our -- all of our financial information and letting them have it all.

And I think the details would be the tricky part in that, figuring out exactly how we would prepare that spreadsheet based on what information, but I'm certainly open to that as a compromise position. I think they could get most, if not all, of that information from anonymized contracts.

And I do think that to Zuffa's point about anonymized contracts, it does matter. It may not -- you know, they may think, Well, from a practical standpoint what's the difference? It matters to Bellator that some fighter contract with some name attached is not going to be at risk of getting out there in public, whether at trial or inadvertently or whatever.

And their expert says in his declaration, We need a -- enough fighter contracts to be able to do our model. He doesn't say how many. He certainly doesn't say, We need all of them. And to just say, Well, you know what, we just need all 100 of the fighter contracts because it's just more practical for us to do it that way, that's not the burden that they have. They need to meet a burden that each and every contract, each and every document that we turn over, they have a substantial need for it.

And they haven't done that here. They need to break this down to a much more specific level than just say, Well, we have a substantial need. Give us everything. And that's where we are.

THE COURT: So what we have agreed to do, if I understand correctly from your reply, is you've agreed to identify all of events that you promoted, including the venues and the athletes, and all event income, including the actual and projected ticket prices, the gate receipts, the ad revenue, the broadcast revenue, the merchandise revenue, and the sponsorship revenue.

MR. KELLY: We haven't agreed, Your Honor, to all of the -- to provide all of the revenue or expense information from those fights. We have agreed and in fact have already provided information about the venues, the fights, the fighters, and purses, but beyond the other revenue, I don't believe that we ever agreed to that and I don't believe that's what we said in our reply brief.

THE COURT: I can't read my own notes, but that's what the UFC wants.

MR. KELLY: You worried me there for a second.

You know, the other thing -- the last point I want to make is this. We've been at this for 15 months, and both sides are telling us today, We're willing to do whatever to protect your information. We still don't have a Court order about how this would be used at trial. We don't have any orders about

limitations on the experts. We want this resolved. And it's not -- it's not prepared to be resolved to protect our information.

As it stands now, if we turn over anything, we're involved in the case in discovery and we have to risk, you know, having our information disclosed publically. I understand that this is a discovery fight and they want to prepare the experts, but that's where the case ends. This case is going to go on, and there is a very good possibility that under the public policy of open records that a trial is going to take place. And it's going to be very difficult for Bellator to protect this highly confidential information at trial.

We have no assurance of that, and while they're interested, they don't get to make the decision on that. So we have lots and lots of concerns. I know you understand, and I appreciate the time and opportunity.

Thank you, Your Honor.

THE COURT: Thank you.

All right. Bellator's motion to quash is denied. Their motion to modify subpoenas is granted. Plaintiffs' motion to compel is denied, except with respect to the countervailing. I'm going to modify the subpoenas with respect to Bellator data. I'm going to give each party until Friday, unless either one tells me you can't do that, to submit a proposed order outlining the -- what you propose to produce as a reasonable accommodation

and compromise. I expect at a minimum that you will have quarterly financial data broken down by categories that you understand are consistent with the parties' needs for their documents in this case. The parties will submit their competing requests for what that order should say. I'll pick one of them or draft a hybrid.

Is there any reason why you can't give me a proposed order by the close of business, and I'll put a time on that because -- by 5 o'clock tomorrow? Counsel for plaintiffs?

MR. CRAMER: Your Honor, I think many of us will be traveling tomorrow, so that might be difficult to get that done.

THE COURT: Monday?

MR. CRAMER: I would say we would really benefit from over the weekend and have until the end of the day Monday. Is that ...

THE COURT: Does that work for counsel for Zuffa as well?

MR. WIDNELL: Your Honor, that works for us.

THE COURT: Mr. Kelly, can you do that?

MR. KELLY: Yes, Your Honor.

THE COURT: All right. And so you will have the written order that will tell you exactly what you do and don't get, and both the parties on this side will be able to articulate precisely what it is that you think you have to have. And I've heard your arguments, I've ready all of your papers,

and you'll get what you're going to get. Okay?

MR. WEILER: Thank you, Your Honor.

MR. KELLY: Thank you.

MR. WIDNELL: Thank you, Your Honor.

THE COURT: All right. Turn now to the decision on plaintiffs' motion to challenge work product protection with respect to the three Mercer documents that are disputed in this case.

Just as an initial matter, I don't typically take matters under advisement because of precisely what happened in this case. This, frankly, is an old motion that fell through the cracks. And so I really welcome you -- we have a procedure under our local rules to enable you to bring to the Court's attention that there is a matter that needs attention and has been pending for some time. I know a lot of lawyers are reticent about doing that for obvious reasons. I used to sit on your side of the table.

But I assure you, especially in a complex case, any time -- I'm not going to promise I'm going to be able to get to it as fast as you want, but I never mind at all being reminded, especially in something that has an impact on the schedule and you making progress on discovery for you to, please, let me know if I've left you hanging on something that you need to know.

So I've had a draft motion prepared and sitting there, and I picked it up and put it down I can't tell you how many

times. I will enter a written decision and order, but I will just tell you in a nutshell what the decision is.

I am going to grant plaintiffs' motion, finding that Zuffa has not met its burden that the three documents in dispute in the clawback are work product protected. And in a nutshell I'll tell you why. The documents of course weren't recognized in the first instance by litigation counsel for Zuffa who produced them as work product-protected materials. There's nothing on the face of the documents indicating they were intended to be treated as work product-protected materials. The documents themselves do not contain legal analysis, legal discussion, or any legal conclusions, or ask for legal advice on any topic.

The documents follow on the heels of an earlier work project performed by Mercer on non-fighter compensation. And according to the parties' papers, Zuffa indicates that Mercer basically finished the non-fighter compensation study and made a proposal to Zuffa about doing a fighter compensation assessment study. And that Zuffa says it elected not to do that. And its outside counsel said, We learned about it in September of 2013 and decided we thought it would be a good idea for our own purposes because of reasonably foreseeable litigation.

And I find that the -- Zuffa has not established that the documents in question are reasonably linked to anticipated -- reasonably foreseeable anticipated litigation. You cite the

need for preparing the study as a result of the Bellator/Alvarez litigation. And that case was filed and it involved a breach of contract dispute between a fighter and a promoter because the fighter was proposing, as I understand it, to leave Bellator and go to work for UFC for more money.

And the contract dispute that Zuffa, excuse me, anticipated it must be drug into had to do with the fact that there were Doe defendants named and a tortious interference claim asserted. And Zuffa thought it was possible it could be brought into the case as a result of the tortious interference claim.

And, however, the Alvarez case was settled in August of 2013. And I appreciate your arguments that the settlement between Alvarez and Bellator involved anticipation that Zuffa would need to agree on a confidentiality provision in order to negotiate further with the fighter and that you had issues with respect to Bellator on that, but these documents don't involve disputes over what did or didn't happen in the Alvarez litigation. And the fact that we live in what some people call a litigious society and the fact that the Alvarez litigation generated interest in the compensation issues that were being raised and the fact that Bellator attached one of your contracts, which of course you were very upset about, understandably so, does not mean that litigation was reasonably foreseeable because the members of the media and members of the

fighters and their representatives were asking questions about your compensation package.

So in a nutshell I find that and in a more articulate written order I will tell you this, but that is the, I have leave to say, the down and dirty of the rationale for my decision. So the motion is granted, and the documents will be produced and may be used.

Yes, Mr. Weiler?

MR. WEILER: Your Honor, may I be heard very briefly on the Mercer ruling?

THE COURT: Yes, sir.

MR. WEILER: Thank you, Your Honor.

I was here in front of you in September arguing these matters. And so there are -- there are many other documents that have been identified on the privilege log that relate to the Mercer challenge, and I think that Your Honor's ruling would be applicable to those as well.

THE COURT: I'm not going to give you an advisory ruling. You got a 30,000 document privilege log just recently, and it's not in front of me. And I'm not going to spout things off the top of my head, but you just heard what I had to say. And both sides can take that into account in negotiating a resolution of any documents you think have been inappropriately withheld.

What Zuffa is saying -- and of course the party

claiming privilege has the burden of establishing and providing a privileged log which allows you and the Court to evaluate whether or not the privilege is appropriately asserted or not. And what Zuffa is -- has said is that Mercer did some work for business purpose and a proposal was made for another purpose and that the work was never actually done. The fighter assessment -- and they've told you in the papers why it wasn't done; because they ended up concluding that the data wasn't statistically enough relevant or the comparator proposed group from other sports weren't -- weren't worth the analysis.

But ...

MR. WEILER: So they say. And then I think that we are entitled to see those documents and test those characterizations and conclusions.

THE COURT: Again, I'm not going to give you -- I'm not finding subject matter waiver based on the three documents in dispute. You've got a privilege log, do the grunt work, and talk to them about whether or not the privilege log is adequate or it's not.

MR. WEILER: I certainly will. We certainly will, Your Honor. Thank you.

THE COURT: All right.

MR. SPRINGMEYER: Excuse me, Your Honor. Would it assist the Court to have all of us e-mail Word versions of our proposed orders in addition to filing them in the case, copying

them?

Considering how detailed some of this stuff ...

THE COURT: Yeah, that's probably a good idea. So if I don't accept any one and I'd have to do a hybrid, I don't burden my staff with -- my typing skills are very suspect.

MR. SPRINGMEYER: Cutting and pasting is the savior of practice.

THE COURT: And Mr. Miller will provide the e-mail number for my -- or e-mail address for my chambers to you afterwards so you can -- thank you for the -- that's a very helpful suggestion.

All right. Let's turn then to the plaintiffs' motion to produce a log that involves a dispute over the electronic devices, meaning phones, of Mr. White.

Yes, sir. Mr. Dell'Angelo for the record.

MR. DELL'ANGELO: Good morning, Your Honor. Yes, Michael Dell'Angelo for the plaintiffs.

So we have filed a motion to produce a log of communications of Mr. White.

THE COURT: Right. And you filed the motion while you were still talking to them. And Ms. Grigsby sent you an e-mail, Why did you file this motion to compel when we were thinking about it and we were working on getting you the information?

MR. DELL' ANGELO: I don't think that's accurate, Your Honor. We had a meet and confer, and on the meet and confer we

requested a log of the communications. And our understanding from Ms. Grigsby is that Zuffa was not prepared or unwilling to provide the log that we were requesting or in the alternative to allow plaintiffs leave to issue subpoenas to request that same information from --

THE COURT: All right. So let me ask exactly what it is that you are asking for, because I know what -- I get it. There are four different devices. There's a Nokia with a limited -- or a Nokia, however it's pronounced, flip phone with limited data, storage capacity, and there's a timing issue with respect to when the lawsuit was filed and when the phones were obtained. And one of them was lost and just found in a box somewhere.

And there's been a long involved process and a back and forth, and you've received almost 2,000 text messages. And you know from the document productions of other people that have been produced that he used certain of these other phones for which you didn't receive information because of, for example, there are exchanges between other custodians on those other phones.

MR. DELL'ANGELO: So what we have, we believe, Your Honor, is a systemic failure to identify, preserve, and collect and produce electronically-stored information, and in particular with respect to Mr. White, text messages. Mr. White is a key custodian of this case. He's the President of the UFC. He

features prominently in the consolidated amended complaint.

We have determined from the document production and I think there's independent evidence of this as well that Mr. White's primary method of communication and certainly the document production suggests that this is true for many of the key custodians in the case is that their primary method of communication about, you know, relevant issues in the case is through text messages.

So what we've determined is that there were at least four phone numbers, and those phone numbers end in 20, 92, 27, and 75. Those four phone numbers relate to at least five phones. There's also evidence that there's --

THE COURT: Right, because one of them was replaced with an upgraded iPhone.

MR. DELL'ANGELO: Right.

THE COURT: A 4 --

MR. DELL'ANGELO: There's also evidence that there is a BlackBerry and a $10,000 TAG Heuer phone that we provided you some information about in the initial motion.

What we have determined is that there are preservation and collection and production issues with respect to each of the phones, and that the information that the defendant, and I think particularly notably Mr. White in his declaration, has provided to the Court is not consistent and suggests that there are serious failures to collect, preserve, and produce that

information. And I think it -- what it does is it informs a serious problem with respect to the identification with the ESI.

And just to kind of give a kind of overview with these, with respect to the 20 phone, which was a Nokia phone, Mr. White says he transitioned that phone to a work phone in 2014, but we have relevant business texts that were produced from that phone --

THE COURT: In 2015, right?

MR. DELL'ANGELO: From 2012, actually, two years before he says it became a work phone. That's the phone that we were told only recently is not reasonably accessible; notwithstanding our meet and confer in the 26(f) conference back in 2015 when we pointedly asked the question, Is there any ESI that's not reasonably accessible and we were told no. And it's very clear from the papers and Zuffa's position, they reached that determination in January of 2015. We relied on that when we attempted to negotiate and get our productions.

Likewise, with respect to the 92 phone -- the 92 number that had an iPhone 4 and an iPhone 6, we have determined through cross-referencing that there are at least 335 text messages missing, and 186 of those postdate the litigation hold that Zuffa says it implemented, right. So those 186 messages should absolutely have been on Mr. White's phone, and they weren't. They were produced by other custodians, but not him.

There's the 27 Nokia phone. In Mr. White's declaration

he says it wasn't used for work after January of 2015, but Zuffa produced text messages as far forward as May 2015, well after White, you know, put into his sworn declaration that he wasn't using the phone for work.

And then there is the 75 phone, which again in Mr. White's declaration he says became a personal phone in 2014, but on May 26, 2017, just less than a week ago, after our persistent inquiries and follow-up and asking Zuffa to find that phone and making it clear to them that their custodians were producing I think close to 1,400 text messages from that phone. Some of which are the most relevant and -- text messages in the case that bear out the allegations in the complaint. They found it. They produced 69 text messages. But, again, Mr. White in his declaration says that it became a personal phone in 2014, but the 69 text messages that were produced date from January 2015.

So I think what you have is a disconnect between the investigation that was made and what counsel has determined, counsel for defendant, what they may be told by their client, or have been able to figure out, but by cross -- so you have that. And then you have what we can independently determine, right.

We just by looking at the texts can tell that relevant ESI is missing from Mr. White's phones, and there were serious issues with preserving them. We were told that the 75 phone was not identified as a phone that would be subject to the

litigation hold. One of his other personal phones was lost, the 27 phone, but there are relevant business texts produced from that phone which suggests that it should have been identified and preserved.

So what we hoped to do was try to identify through other means what text messages were missing, and we thought that one party or the other could obtain a log of the communications for those phones.

THE COURT: And by "log," in some places in your papers you're referring to a pen register or trap and trace. You think the providers contained information -- have information dating back to the relevant time period for which -- from the litigation hold forward that might tell you every number that was called to and from the devices you've described.

MR. DELL'ANGELO: So it is not uncommon, Your Honor, in conspiracy cases to request exactly that information.

THE COURT: No, but that is what you're asking for.

MR. DELL'ANGELO: Yeah, we get it for -- in many cases. Sometimes the carriers actually have the text messages. Apple is one that we understand depending on how the user has the account set up may still have the messages and they may exist.

And I think it's important to understand here that as we have gone through this process we've discovered some really important things, right. So we've discovered, for example, that there are text messages that Mr. Fertitta did not produce, he's

the former chairman, that postdate the litigation hold that were on Mr. White's phone, suggesting that there was ESI lost from Mr. Fertitta's phone. The production that we received last week from the 75 phone contains text messages between Mr. White and Mr. Silva, another key custodian, matchmaker for Zuffa, that were not produced by Mr. Silva and that postdate the litigation hold, suggesting there was data lost from Mr. Silva's phone.

There's a whole separate issue with respect to Mr. Mersch. There were a small number of text messages produced from other custodians --

THE COURT: I understand.

MR. DELL'ANGELO: Yeah.

THE COURT: You've attached all of the logs. You showed me all of the phone numbers.

MR. DELL'ANGELO: Right.

THE COURT: I get -- but ESI production isn't perfect. It's the nature of the beast.

MR. DELL'ANGELO: There's a difference between production and preservation. And it's very clear, it's very clear, that ESI that postdates the litigation hold has been lost.

THE COURT: All right. So tell me if I grant your request to serve the providers for each of the devices that are the subject of your motion, how do you propose to deal with -- you're effectively asking for every number to and from, every

text, to the extent that data has been collected or kept further by the provider.

MR. DELL'ANGELO: Yes.

THE COURT: Whether it has anything to do with this case -- I mean, any time he called his doctor, his mom, his friend.

MR. DELL'ANGELO: So --

THE COURT: You're asking for the man's life.

MR. DELL'ANGELO: So it is clear that there are many, many business texts. Again, it was a key custodian's primary form of communication. We have phone numbers from the other key custodians that are in the production. Of the 45,000 or so text messages that were produced, many of them indicate who the sender or recipient is by name, right. So there is a process that we could go through to start --

THE COURT: Sure, and that's what I'm now asking you about.

MR. DELL'ANGELO: Yes.

THE COURT: How do you propose to do that to protect the man's privacy for anyone he's ever contacted during the entire relevant period? Because that is patently overbroad and unreasonable and an invasion of his privacy in my view.

MR. DELL'ANGELO: Well, where we started, Your Honor, was asking Zuffa to obtain the information.

THE COURT: That part I understand.

MR. DELL'ANGELO: Yeah, and to provide it to us.

THE COURT: Give them the burden of going through. And why -- if I grant that request, why shouldn't I limit it to communications with the custodians for whom I've authorized ESI and document productions?

MR. DELL'ANGELO: Because doing so would substantially limit the scope of what should have been on those phones and should have been produced. So I understand --

THE COURT: But why aren't we setting up round two of the same dispute? If -- if I grant your request and I require Zuffa to obtain the data directly from the providers and require Zuffa then to go through the information that's available from the providers and redact it, how should the redaction occur in a way that you believe meets their preservation and production obligations?

MR. DELL'ANGELO: Well, I think it would depend on what information comes back. Certainly, if there's text message content, they can continue to do what they are insisting they do, which is conduct a linear review. They can review any text messages --

THE COURT: Which they did for 45,000 texts, right?

MR. DELL'ANGELO: They did for those that they preserved, right.

THE COURT: That part I get.

MR. DELL'ANGELO: Yeah, but the question exists that

there needs to be a review for any that have not been preserved and can be recovered. So it's really just a continuation of the obligation that they undertook in the first place. And the reason that they undertook that obligation, I think they were quite clear, we had no issue with this, is that there's always a nest of personal and business text messages. We see that in phones that Zuffa --

THE COURT: Anybody that has your number one way or the other, despite your best intentions --

MR. DELL'ANGELO: Yeah, the two will nevertheless cross, and they clearly did here. And so Zuffa's mechanism for dealing with that was they were going to do a linear review. We were absolutely fine with that.

So I see no reason why that procedure can't be applied here. I mean, we don't need to have the data in the first instance, right, which is why we started with we would like you to go get the information as a way to resolve it. The problem that we had, if I may, is that notwithstanding the fact we started asking these questions in late March, it took the better part of three weeks to get a very simple answer, which was, Did you collect the 20 phone, the 27 phone, and the 75 phone? Those are answers that should have been known and no later than July 2016 when Zuffa --

THE COURT: That's true, but if you could remember everything that you ever did and said in the case of this

complex --

MR. DELL'ANGELO: I certainly think it is incumbent upon any party to know what sources of ESI they collected and produced. And they're very clear in their declarations and in their papers that they conducted a survey, right, and made lists of phones and electronic devices, right. And frankly -- so all one needed to do was repair back to that list.

One of the reasons that we sort of started -- we thought that multiple phones may have been produced is that the phones were -- the productions from Mr. White's data kind of came in tranches. So it gave the sense that these might be multiple phones when they weren't.

But, again, you know, we're not talking about whether or not some manila folder in a remote and dusty corner of a storage room was pulled and copied. We're talking about which phones from the key custodian did you collect and produce. And if you think about the 20 phone, Zuffa tried -- it represents that it tried. It kept two different vendors to collect that phone in January and February of 2015 and that it failed.

So when we started asking in March, Did we get text messages from that phone, I don't think anybody had to search their memory bank or take three weeks to figure out what they had long since known, right.

So the problem that that created was it moved the clock, right, moved the clock so close to what was then the

close of fact discovery that it wasn't possible for us to serve the subpoenas for the information which we're now moving, right, because we didn't have time under the fact discovery or, excuse me, the fact discovery period. Whereas, if Zuffa, for example, in April of 2015 when we had a 26(f) conference had said, The data's not reasonably accessible, we could start addressing these things. If they properly identified the 75 phone or the 27 phone as phones that had substantial amounts of work text messages on them, notwithstanding the fact that Mr. White said he primarily used them for business, we could have gone down this road and resolved it long before.

But given the fact that the clock got run out on us, we had to seek relief, and we tried to do it in what we thought was the most efficient way which was just asking Zuffa to do it. Failing that, we needed their agreement to serve a subpoena out of time. Frankly --

THE COURT: I understand.

MR. DELL'ANGELO: Yeah.

THE COURT: All right. Let me hear -- who is going to be arguing on behalf of Zuffa? Ms. Grigsby.

MS. GRIGSBY: Stacey Grigsby, Your Honor.

Good morning, Your Honor. May it please the Court.

So you heard plaintiffs say that this is some type of systemic failure, but I think it's important to just make this simple, which is the who, what, when, and where. So when we're

talking about the who in plaintiffs' motion, although initially the discussions and the meet and confer were focussed on the text messages, plaintiffs have now raised the host of issues that they want an entire inventory or communication logs for a 15-year span for every Court-ordered and agreed custodian. So that's unclear. It's making it complicated.

And what. This is a motion to compel. This is not a motion for sanctions under 37(e). This is not a motion for spoliation. And the standard there, as you have said, is that ESI is not meant to be perfect. The real question is whether Zuffa's efforts to preserve were reasonable.

And then, finally, when we're talking about --

THE COURT: Okay. With respect to Mr. White, let's cut to the chase; because I understand your arguments with respect to all of the other custodians.

MS. GRIGSBY: Yes, Your Honor.

THE COURT: However, with respect to Mr. White, you have issues.

MS. GRIGSBY: Your Honor, and I think we've acknowledged that there were some issues with Mr. White.

THE COURT: And issues that you did not discover. You fault the plaintiffs for not discovering or bringing the matter to your attention until mid-March of this year, but you didn't discover it until after they told you about it.

MS. GRIGSBY: Your Honor, again, this was a large-scale

production of Mr. White --

THE COURT: Sure, and that's my point.

MS. GRIGSBY: Right.

THE COURT: Don't fault them for it because, you know, it's very clear what's happening. They're scurrying around preparing for depositions, and they start noticing from their review of documents something seems amiss. So I'm not sympathetic to your timing arguments on the issue, and now I want to see what we can do to solve it, at least with respect to Mr. White.

MS. GRIGSBY: Yes, Your Honor. And just to put this in context, although there were dozens of messages exchanged, the issues with Mr. White were raised along with a host of other questions about the text messages, including the format, whether it was possible to, you know, produce them in an Excel file.

THE COURT: I understand you have worked with them on this, and you reproduced the texts. And you produced the metadata with it. So -- and you -- I fully appreciate that's the nature of the beast, especially with electronically-stored information and -- but the only issue that I really have -- and you don't need to talk to me about the entire systemic failure argument across the board. What you need to talk to me and persuade me, how do we resolve the identified problems with the failure to preserve and produce materials from Mr. White's devices.

MS. GRIGSBY: Sure, and I think it's important to go actually phone by phone because I think a lot of this is actually getting jumbled just in the plaintiffs' brief I think because the parties did not finish their negotiations. I think some of the information just that's been presented on paper isn't exactly -- I wouldn't say -- it's just not --

THE COURT: Well, you kind of need a John Madden diagram to follow it.

MS. GRIGSBY: Well, we have a diagram of the phones just to try to ease what's going on because really we're talking about -- as you understand, we're talking about four different lines. And I think it's important to understand what happened with each line. If my technology can work.

But basically in terms of the timing with Mr. White, he had an interview, not just with Zuffa's inside counsel, but with Zuffa's outside counsel in January of 2015 to identify the appropriate text message -- or phones. So it's just simply not the case -- there's a statement in this reply brief that counsel never talked to Mr. White. It's actually --

THE COURT: No, but you did get different information at different times.

MS. GRIGSBY: That is correct. And so the issue is, once we got the information, what we did. And once plaintiffs raised the issue in March of 2017, we immediately started to investigate. I mean, there was just some confusion because

there was so many text messages.

Also, when you look at the spreadsheets, at times it doesn't even show the phone number that it's coming from. It may say in a custodian's file, if that person has a contact for Dana White, it may say D.F. White; not necessarily the number. We had multiple reviewers looking at all of the messages.

So we were not in the process of mirroring up, Okay. It looks like there are 51 text messages over five years from what appears to be this 3127 number. Two of which were Mr. White forwarding it to himself. We had to make sure we understood that it was actually his phone. We had to go back to Zuffa. We had to go back to him.

But the thing that I think that plaintiffs are really arguing over, I mean, the only device that has -- we have been unable to collect is the 312 -- I'm sorry -- the 27 number, which only had 51 responsive text messages over a five-year period. If we go through them line by line -- so we're talking about the first Nokia flip phone, the 20 number. That number was collected in January -- or that phone was collected January 8th of 2015. It was given to counsel for the purpose of -- oh, sure.

So I actually -- if the Court will allow, I have this chart.

THE COURT: Sure. And show it to the other side.

MS. GRIGSBY: Also have a copy.

THE COURT: Although I will tell you, I'm not going to conduct a mini trial on the numbers and the lines and the number of texts.

MS. GRIGSBY: And I hope we don't have to do that. I just want to make sure that everything is clear because, like I said, I feel like there were -- there was not enough communication within -- between the parties to actually get an accurate representation from all of the papers what has actually happened.

So if we start with the 92 number, that number was collected in January 2015. It was subject to a litigation hold. It was preserved. The text messages were collected at different times off of that phone in 2015 and also in -- the end of 2015 to the beginning of 2016.

Plaintiffs right now are alleging that -- and this was not the subject of the meet and confer that -- the log. That this particular number somehow there was -- in the reply they actually said there were text messages that were destroyed. We have no evidence of that. It was preserved. We excepted texts. We preserved it before we even received a document request.

He did upgrade phones, and during this time there were multiple times -- well, there was one time where carriers were changed, between one carrier and another, but we just have no evidence. And I really think plaintiffs' complaints on this phone come down to the fact that the production was not perfect.

It's unclear what they'll gain from a pen register on this particular number.

Then you have the Nokia flip phone, the 20. That's the one I was speaking about before where Mr. White literally stopped using the phone in an effort to preserve it on January 2015. So, again, we're talking about 2015 when the -- the beginning of the litigation. We collected it.

When plaintiffs raised the issue, we were already looking into sending it to another vendor, as plaintiffs concede in their papers. And in the meantime, after plaintiffs filed their motion, we were actually able to extract text messages.

Now, plaintiffs say at the Rule 26(f) conference that happened in April of 2015 we didn't say it was reasonably inaccessible because we had already tried in January 2015. That is -- that is actually just a slice of the picture because if you look at Ms. Lynch's declaration, which is Exhibit G, it shows that on paragraph 24 that we made another extraction attempt in 2015 and -- at the end of 2015/the beginning of 2016. It is simply not the case that at that point we had determined we could not get any messages off of that phone.

So for that phone we had preserved it. We made multiple attempts and finally --

THE COURT: You preserved it except to the extent that when it was continued to be used with modified -- with limited storage messages were probably overwritten.

MS. GRIGSBY: Well, the issue there would be from literally December 18th, 2014, to January 8th, 2015, but it was identified as an issue. I mean, again, this is just at the very beginning of the litigation. And the phone was shut off and he stopped using it.

So, I mean, just the idea that plaintiffs write in the reply that we concede that it was passively deleted, we do not concede it was passively deleted. In fact, Mr. White has a submitted declaration saying that he stopped using the phone so that that didn't occur.

Then we should get to -- I mean, just going on through the devices. Like, then we're talking about the 75 device. I mean, this is one of the devices where it was unclear at the time we were collecting phones that that would have potentially responsive ESI. Once plaintiffs made an inquiry, we took -- undertook efforts to find that particular device, which was not regularly being used for business at the time the collection had occurred in January 2015. We have in fact found the phone. We sent it to a vendor, and we've produced 69 messages off of that phone. Again, this is not an effort to prevent them from getting any information to which they may be entitled.

And, finally, if we go to the 27 phone which is the personal phone, just based on the sheer number -- we have a graphic that there's 6,800 text messages from Mr. White. There are literally 51 that we've identified from other custodians

that are text -- you know, text messages from that phone, and two of which Mr. White sent to himself.

It's just not the case that this is something that would have been glaring in our review and production of 45,000 text messages.

So in terms of where to go next, because I know that this is what the Court is concerned about, in our opposition we're responding to what plaintiffs have raised which is that they want a 15-year log of these four devices from the cell phone carriers. And I think it's problematic for a few reasons like, one, the length of time and also given the potential responsiveness of some of the devices, such as the 27 device. It appears to be completely overbroad.

The second problem is, and as we noted in our papers, pen registers do not keep text message, the actual substance of the text message.

THE COURT: The terminology may be -- may not be appropriate, but what they're basically seeking is subscriber information that gives them as much information about the various accounts over the relevant time period as is available to make you then go through it all and determine if any of the material that's currently available from the providers is responsive to their discovery requests. That's what they're proposing, as I understand it.

MS. GRIGSBY: And they were also proposing to do it

over a 15-year time period. In the meet and confers I even discussed with plaintiffs that we were going to be working and see if we could get logs so that we can figure out what happened with the various phones. They were unsatisfied with that.

Part of it is that plaintiffs literally have escalating demands. First they ask us to look for one thing. Then they ask us to do another while we're in the process of meeting and conferring. Then they file a motion to compel.

THE COURT: That's not all that unusual in litigation in which the more you learn, the more you question and the more you talk to each other. And I'm sure you've had issues with them in the same vein.

MS. GRIGSBY: Well, Your Honor, we haven't filed a motion to compel before meet-and-confer conferences were complete. Just last week I get another -- we have received another e-mail from plaintiffs asking whether we are going to honor the text message protocol, whether we were going to find the listing of devices. They've already made the decision to argue and to file this motion to compel because we had agreed to provide those things.

If plaintiffs would be satisfied with that, then, you know, and have some reasonable scope to what they're requesting, then obviously we'd be willing to work it out. It was never our intention to go before the Court over something like this where, as we've told the plaintiffs, we believe the actual numbers

substance is very, very low.

But it's unclear to us what claims they'll be satisfied with apart from a complete log of Mr. White's text messages/calls for the past 15 years.

THE COURT: Thank you.

Mr. Dell'Angelo, you have two minutes to tell me exactly what you'd be satisfied with with respect to Mr. White because I'm not going to order relief with respect to the other custodians at this time.

MR. DELL'ANGELO: I apologize, Your Honor. I didn't hear the last -- the very last part of this.

THE COURT: You have two minutes to tell me exactly what it is that you want with respect to Mr. White's devices because I'm not going to allow or require the log that you request for all of the custodians for a 15-year period of time.

MR. DELL'ANGELO: Okay. Well, let me be clear about one thing. We've heard a lot about 15 years, but there's no indication that these phones have actually been in use for that long.

THE COURT: I understand that and that's -- but that's --

MR. DELL'ANGELO: So I think --

THE COURT: That's why I'm asking.

MR. DELL'ANGELO: Right. So, first of all, we would like a log for the period of time that the phones have been in

use. I mean, one thing that we requested --

THE COURT: And what would be on that log?

MR. DELL'ANGELO: Information that indicates from whom and what number the text was sent or -- and to whom and what number it was received, to the extent that that's information -- that information's available, the date, the time, and the content of the message. And I think, Your Honor, to the extent that there are some privacy concerns, as you telegraphed, in addition to the linear review that I talked about, I certainly think that we can fashion some parameters not only, you know, by limiting things to Zuffa custodians as well as other relevant third parties like agents, fighters, sponsors, you know, that we know of that would be most likely to have relevant communications, may be a way to sort of winnow this down.

And I also think it would be helpful to have the kind of inventory that we have requested and understood that we were going to get for each of the devices, you know, that we've talked about today: the 92, 20, 75, and 27, as well as any other devices, like the BlackBerry and the TAG Heuer phone or whatever others may be identified for Mr. White.

And, you know, lastly, something that we raised in our brief that -- and you saw in the declaration is the defendant has created an inventory of the electronic devices of the -- what are going to be custodians. I see no reason why, and I think it would aid the parties and the Court to understand these

issues, if we had just the basic inventory that they'd created because I think it would make the process of identifying, you know, which custodians and potential third parties we should be looking at on the logs that I've indicated. Make that more efficient and kind of understand the universe of devices that may be at issue and certainly that Mr. White may have used or been in communication with during the relevant time period.

THE COURT: Thank you.

MR. DELL'ANGELO: Okay.

THE COURT: Your motion is denied. And I'm going to take a 10-minute recess and take up the remaining matters on calendar, including your Joint Status Report, the adjustment of the discovery plan and scheduling order deadlines, and the scope of discovery that you're going to get in the time I'm going to give you.

All right? So just take a 10-minute break, and then we'll be right back.

COURTROOM ADMINISTRATOR: All rise.

(Recess taken at 11:10 a.m.)

(Resumed at 11:22 a.m.)

THE COURT: All right.

COURTROOM ADMINISTRATOR: Your Honor, we are now back on record in the matter of Le versus Zuffa, and that Case Number is 2:15-cv-1045-RFB-PAL.

THE COURT: All right. So we have all of the same

parties except counsel for Bellator has left. We now have what's left, which is the plaintiffs' request for an extension of the discovery plan and scheduling order deadlines, the parties' update and status with respect to the discovery and disputes about what, if any, additional discovery should be allowed based on where we find ourselves here today.

So let me start by asking counsel for plaintiffs what the status is concerning the motion to quash filed by AXS in the Northern District of Texas.

PLAINTIFFS' COUNSEL: Mr. Weiler will address that, Your Honor.

THE COURT: All right. Mr. Weiler.

MR. WEILER: Good morning, Your Honor.

So the status is that that matter is fully briefed. We have obtained local counsel. And we seek the Court's guidance on whether that is something the Court wishes to address as part of the Court's consideration of discovery issues generally, and if so, we will prepare in very short order a motion to transfer.

THE COURT: All right. So, well, I want to know -- obviously, lawyers have no leverage in Federal Court about when their matters get heard, so I fully appreciate that. But you don't have a hearing set or you don't have --

MR. WEILER: We don't have a hearing. We just retained local counsel. The motion to quash is fully briefed. It relates to whether plaintiffs can take the deposition of Mark

Cuban who in -- who at one point wanted to create a promotion that would compete with Zuffa. There is dispute about an important fighter --

THE COURT: Here's what I was inclined to do with it. You've got also a motion to compel that was filed with respect to nonparty, Zinkin Entertainment, that's in the Eastern District of California, correct?

MR. WEILER: That's correct as well.

THE COURT: And so obviously you need decisions on both of those things either here or in the districts in which they are originally filed in order to proceed with the -- getting the documents and/or a deponent from each of those entities.

MR. WEILER: Yes. That's correct, Your Honor.

THE COURT: And so what I was inclined to do is just defer consideration of that until we see what the outcome of those motions are and whether they're mine or they remain where they are. And -- because there's not much progress we can make on them while -- I'm not going to hold up all of the remaining discovery or adjust the schedule indefinitely, but if you are granted leave to obtain documents or to depose individuals, take up at that point timing and sequencing and whether they should be allowed in this case.

MR. CRAMER: Your Honor, can I raise one issue with respect to the entity that Mr. Cuban -- the AXS entity? The CEO of the entity, Mr. Simon, has said he would willing be deposed.

THE COURT: I understand that, but do you want to depose him without the documents?

MR. CRAMER: I believe we --

MR. SAVERI: Well, Your Honor, Joseph Saveri. Sorry to be the third person to stand up.

We certainly want the documents that are relevant to those witnesses before we take the depositions. That makes --

THE COURT: That was my assumption, yes. So it makes no sense --

MR. CRAMER: Excuse me, Your Honor. I think we were both saying that makes the most sense. And so, I mean, one of the things we're trying to do here today is do things in a sense -- sensible logical way. Our view is we should get the documents, look at the documents, then get prepared for the deposition, and take the deposition.

THE COURT: Assuming you get them because --

MR. CRAMER: And we'll get some. We may not get everything we want, but whatever we get I believe we should have a chance to review it before we take the witness's deposition.

THE COURT: Understood. So that's my -- that was my telling both sides my inclination is to defer a decision on what we do with discovery from these two entities where there are pending motions until we see the outcomes of the motions.

MR. WEILER: Whether that's before Your Honor or whether that's in Texas.

THE COURT: Correct.

MR. WEILER: Okay.

THE COURT: Just as a heads-up.

MR. WEILER: Thanks, Your Honor.

THE COURT: If the decision was intimate -- or imminent, we could take that into account here, but we can't. So -- all right.

So the plaintiffs want -- and you filed this originally March 21st as an emergency request, and at that time you wanted a 60-day extension of the deadlines and to run all of the fact discovery deadline and to run all of the remaining deadlines out consistent with that. In the meantime, you've stipulated with respect to the expert -- class and merits expert deadline which is currently July 31st. And we've resolved the work product motions so we don't have to run a date out on a tentative unknown date.

So you've got a lot to do in a case in which the discovery cut-off has expired.

MR. CRAMER: Your Honor, may I be heard on that?

THE COURT: Yes, sir.

MR. CRAMER: Thank you. Eric Cramer for the plaintiff.

So in the -- since we filed our emergency motion for an extension, there's been a lot of water under the bridge, a lot of things have happened and haven't happened. But I think we learned this morning that there is a lot to do. We now --

THE COURT: That's been evident since you started, you know, really trying to schedule in earnest starting in March, knowing you had a May 1 deadline.

MR. CRAMER: Yes, but there have been a lot of things that have happened that are beyond our control. For example, for whatever reason we didn't ask Your Honor to rule on the Mercer document motion according to that process. But that motion was holding up not just the Mercer documents themselves, but several 30(b)(6) depositions that Zuffa has agreed we can take once we get those documents. So presumably we'll get those documents and at least be able to take those depositions with one caveat.

Your Honor, Zuffa, after we filed this emergency motion, for the first time produced its privilege log in April with 30,000 entries. Many of those entries related to the Mercer documents. Every time we scratch the surface in this case we have found or at least often we've found that Zuffa has used the work product and attorney/client privilege protections broadly. Your Honor has ruled in our favor in three of those motions.

And so there are -- there's work that we need to do with reference to that privileged log. We've already noticed problems with it, and we're going to need time. We would like time -- some time to address it.

There have been -- there are also other things that

have come up, but even if you just look at the depositions that Zuffa has agreed we can take, it's going to take longer than until June 30th. For example, Zuffa has agreed we can take four depositions, the key depositions of top Zuffa executives: White Hendrick, Silva, and Mersch. The White deposition kept being put off in part due to this text message issue which has now been resolved, and so we can go forward with the White deposition. But that was being held up.

I am taking Mr. Silva's deposition next week, but then we have Mersch and Hendrick. These -- we have at least three days of 30(b)(6) depositions that I just mentioned. There's also a custodial 30(b)(6) deposition that needs to be taken that Zuffa has agreed. Zuffa has also agreed that if -- that once the issues relating to the AXS subpoena that we just talked about and the motion to quash in Texas are resolved that we can take the depositions of Mr. -- of Mr. Cuban. Actually, they haven't, but Your Honor says we'll wait on that. But those are issues that we've been trying to deal with.

Zuffa has agreed, though, that we can take the deposition of Mr. Coker, and that was awaiting the resolution of the Bellator motion. That is now in the process of being resolved, but then documents will need to be produced. We'll need to review those documents. That will take a bit of time. And then prepare for and schedule that deposition.

Zuffa has agreed that plaintiffs can take a 30(b)(6)

deposition of WME, the entity that bought Zuffa in -- I think they closed in August of 2016. That deposition has been held up in part because Zuffa has still -- WME is still producing documents relating to our September 2016 subpoena to WME. In fact, since May 1 WME has produced 60,000 pages of documents. That's not our fault. And we need to be able to review those documents and prepare for this deposition which Zuffa has agreed we should be able to take.

Zuffa itself is continuing to produce documents. Zuffa told us -- Zuffa just told us that they're about to produce documents next week relating to acquisitions. Zuffa has produced 50 -- 90,000 documents since November of 2016. And so we are not perfect on our side --

THE COURT: And you tell me that you have spent 10,000 attorney hours since the document productions in this case, and that is what you do in complex cases.

MR. CRAMER: Yes. We have been working very hard. Zuffa produced 500,000 pages of documents after May of 2016. We've gone through those documents. We have -- we started taking 30(b)(6) depositions in November and December. We started with fact depositions in January. We've taken 21 depositions in this case, but there are, as we've just mentioned, several key discovery issues that are left, some of the most important depositions in the case which typically come at the end.

The normal process is you get the documents. You review them. You go through them. Then you take the 30(b)(6) depositions, and then you start with the lower fact witnesses and you work your way up.

And for various reasons that we've discussed, many of them beyond the plaintiffs' control, things have taken longer than any of us had expected, starting with the 1.8 million FTC documents that were discovered --

THE COURT: I'm not going to go back to September of 2016.

MR. CRAMER: You don't need to go back to it. You don't need to go back to it, and I won't go back to it. That's because I think all we need to look at is what needs to be accomplished in the next 60 days and know that we can't do it by June 30th. And so what I'm asking Your Honor is that we extend the discovery period for 60 days from today. Move the expert period from July 31 to August 31, 30 days. And allow the plaintiffs to take the discovery that they need to take within the 60 days. And we will work with Zuffa, with Bellator, as hard as we can with third parties to get the discovery that we need.

We -- I mean, we have served 70 subpoenas in this case. We have -- I've never seen the amount of evasive action taken by third parties to avoid being served and to avoid producing documents. The fact is people in this industry do not want to

get crosswise with Zuffa, and so they've been avoiding and running. And we've had to have long, long negotiations and file motions to compel --

THE COURT: All right. You've served 70, but you are down to 13 or 15 -- 17 --

MR. CRAMER: Well, we received -- that's correct. We received a lot of documents. We've abandoned several because people couldn't be served. We have worked very hard to try to get the documents that we need, but I think the bottom line is this case has gone on for two and a half years. It's a case of public import. It deals with business practices of an entity that runs a business that has lots of fans. It deals with the livelihoods of a thousand or more fighters. And it's a case of public import. It's gone on for two and a half years. There's no trial date. We're at least a year from trial right now given the way the schedule plays out. And all we're asking, Your Honor, is for 60 days to complete discovery.

And there are some other very important things that we need to do within that period of time. We've subpoenaed multiple boxing promoters. We have two depositions scheduled of boxing promoters for June 26 and June 28th. Zuffa has opposed those. We've served a subpoena on Raine, which is an entity that -- an investment banking firm that consulted in WME's 2016 acquisition of Zuffa. We served that in August of 2016, and we want to take that deposition and get those documents.

I mean, that acquisition in 2016 was a surprise to us, and it opened up doors to a whole avenue of additional discovery that we could not have anticipated when we initially negotiated the fact discovery period.

Zuffa -- Zuffa went out, and to justify a $4 billion valuation, it needed to demonstrate to the buyers that it had market power. Nobody pays $4 billion for an entity that basically has no assets, unless it's convinced that it has market power. And what we've learned is that a lot of the documents relating to that acquisition are highly relevant documents, and that happened in August of 2016. We immediately served subpoenas to WME and to Zuffa, and we've been receiving documents relating to that evidence and working very hard to try to get to the bottom of it.

As I said, since May 1 WME --

THE COURT: Have you reviewed what you have received to date?

MR. CRAMER: We've -- well, we've reviewed everything reasonable -- we reasonably could. We have a protocol in place. When something gets in, it goes through a process of getting reviewed, but we just got 50,000 pages of documents from WME on May -- from May 1st to the present. So we're working on those documents, but it creates a difficult situation.

So, look, the bottom line, Your Honor, is we're asking for 60 days to do what we can do, to work with Zuffa and

Bellator and the other third parties to get done what we can get done in that period of time. And one other issue I would make -- one other point I would make is the Mercer documents, the privileged log, the WME acquisition, in the normal course of discovery, what happens is you learn things. As the plaintiff you read documents, you take depositions, and you learn things.

And because Zuffa back-loaded its document production, because of this surprise purchase in August 2016, because we have a privileged log that was produced in late April of -- finally produced in late April --

THE COURT: And how many months did it take you to log less than 900 documents?

MR. CRAMER: Well, I don't know the answer to that question. What I can say, though, is that Zuffa certified to Your Honor that they had substantially completed production in September of 2016. Now, there was another RFP that we served in part -- in large part relating to the WME acquisition, but there was nothing preventing Zuffa from doing a privileged log on a rolling basis; get the privileged log out relating to what you've already produced and then update it later so that we're not -- so that we're not facing April 2017 with an April 30th fact discovery cut-off in a case that's been pending for two and a half years of great public import and a lot of complexity, 30,000 entries, and no time, no ability to try to uncover what's going on there. We already know based on your ruling -- Your

Honor's ruling relating to Mercer that there are documents on that log that are highly relevant and likely improperly withheld.

So Zuffa shouldn't be able to benefit from its dilatory conduct in producing that privileged log in April of 2016 or in back-loading its production. But the bottom line is all we're asking for is 60 more days. So, Your Honor, we ask that you allow us that time, push back the schedule, the expert schedule, another month. The only reason why we agreed to July 31 was because --

THE COURT: You might not get anything now.

MR. CRAMER: Well, A, we might not get anything, and when Your Honor moved the status conference from I think the day before the expert -- we were facing an expert deadline.

THE COURT: I understand, and it was perfectly reasonable for you to do what you did. And that's fine. And so now we're moving forward.

MR. CRAMER: Good. All right. Well, I think I've made my point. I appreciate Your Honor hearing me.

If you have any questions, I'll be glad to answer them.

THE COURT: So which depositions do you currently have scheduled now?

MR. CRAMER: Okay. So we have scheduled the deposition of Joe Silva. I'm taking him next week. We have several -- we have two depositions from boxing promoters.

PLAINTIFFS' COUNSEL: Yes. Warriors Boxing, Leon Margueles and ...

MR. CRAMER: For the end of June.

PLAINTIFFS' COUNSEL: June 28th is DiBella.

MR. CRAMER: We have several depositions that Zuffa has agreed we can take, but have been awaiting various things to happen before we can schedule them. The White deposition --

THE COURT: So let me -- I need to be on the same page with you.

MR. CRAMER: Okay.

THE COURT: You have Silva scheduled?

MR. CRAMER: Yes.

THE COURT: You have DiBella scheduled. You have -- is it Margueles scheduled?

MR. CRAMER: Yes.

MS. GRIGSBY: Your Honor, can I just interject that this is actually the first we've heard that DiBella and Margueles are scheduled.

THE COURT: I'm going to give you an opportunity. I'm just -- now I'm hearing from them because I've got a list of about 50 people and trying to find out who's on first is where I am right now.

MR. CRAMER: Yeah. I mean, the issue -- the reason Zuffa doesn't know is we've been trying to schedule depositions. Obviously Zuffa's taken the position that we can't --

THE COURT: Well, it's scheduled with respect to them, but if Zuffa doesn't know about it, that's another issue.

MR. CRAMER: Well, Zuffa's been taking the position we can't take any depositions, other than --

THE COURT: That part I get, but you still have the issue you have to talk to each other.

MR. CRAMER: Of course.

THE COURT: All right. So you have these three. Are there any others that have been set or are close to being final with any of the nonparties?

MR. SAVERI: Well, we talked -- excuse me, Your Honor. Joseph Saveri. We talked about Cuban. We talked about Simon. There was ...

MR. CRAMER: There's Coker from Bellator, but those haven't been scheduled. But --

THE COURT: Correct. I'm asking about scheduled right now.

MR. CRAMER: Yes. I apologize. I think that's it, Your Honor.

PLAINTIFFS' COUNSEL: Your Honor, we have attempted to schedule the other three boxing promoters, and they have been advised by Zuffa's counsel --

THE COURT: But you told me that --

PLAINTIFFS' COUNSEL: -- the discovery period is over.

THE COURT: I'm not faulting you for not -- I just want

to know where you are right now here today. Okay?

MR. CRAMER: Well, I think we have --

THE COURT: Because I get that, you know, when a party hears that the discovery cut-off has run and we don't know if the judge is going to grant any more time ...

MR. SAVERI: Shuts it down.

THE COURT: Stuff happens, yeah.

All right. And so you have listed 10 depositions, and of those -- of nonparties that you want of the various -- and setting Simon and Cuban aside because we're waiting to see the outcome of the pending motions in other districts, you've scheduled two of the 10. So that leaves you wanting to take six more depositions of nonparties from the Raine Group to these various individuals, including Moody's. And if I give you 60 days, what are the odds you are going to be able to complete them in the 60 days you just asked for?

MR. CRAMER: So, Your Honor, the odds are we won't be able to complete all of those, but I think from our perspective the best outcome for everyone would be for Your Honor to give us a certain amount of time and allow the parties to figure out under the normal discovery rules what can get done within that period. As long as Zuffa's proceeding in good faith and third parties are proceeding in good faith, the plaintiffs will be forced to make some decisions, right. We understand that.

THE COURT: You know you're going to have to pare this

list down in order to get it done.

MR. CRAMER: We understand that, Your Honor. And I think the best way for Your Honor to handle it, in our opinion, is to push back the deadline, give us 60 more days, and allow the parties --

THE COURT: I just want to make sure that you understand that that's the inevitable consequence because I'm not going to say, Oh, well, we still need 15 left.

MR. CRAMER: No, no.

THE COURT: 15 more, 15 more.

MR. CRAMER: We understand that, but the only caveat being that there are -- there are things that might stem from the privilege log or the --

THE COURT: That's always the case.

MR. CRAMER: Right. So --

THE COURT: You can take the last day of deposition and you could have some atomic bomb go off in terms of information that changes everything.

MR. CRAMER: Right. So putting that caveat aside, we -- look, we do this all the time. We're sophisticated lawyers. We understand we need to make tradeoffs. So we think the best way to handle it is for Your Honor to give us the 60 days and force us to make those decisions.

THE COURT: All right. Thank you.

MR. CRAMER: Thank you, Your Honor.

THE COURT: Who will be arguing Zuffa's position with respect to this?

MS. GRIGSBY: Stacey Grigsby, Your Honor.

THE COURT: Ms. Grigsby.

MS. GRIGSBY: Well, let's just start with two premises here. The first is that Zuffa has actually agreed to much of the discovery that plaintiffs contemplate in this Joint Status Report where most things have fallen out of their control or where they can arguably say Zuffa played a role in their inability to take discovery. We've resolved it. Key examples are the four Zuffa witnesses who are being deposed in the next few weeks. Also WME-IMG, again, we did not oppose. We reached a stipulation concerning Mercer and the ability of plaintiffs to call back witnesses, two particular witnesses, if they had not been deposed.

We've been trying to work with them, but what we oppose is a free-for-all for the next 60 days so that plaintiffs can be exactly in the same situation that we're in now which is --

THE COURT: Well, and that's why I just asked them this question. They've identified the universe of what they'd want on their wish list if they get it all. And they know they're going to have to make compromises if I give them the 60 days and they're going to have to pare it down. And they're going to see what is really realistic to do in 60 days. Why isn't that a reasonable approach?

MS. GRIGSBY: Because I think that there needs to be ground rules in terms of the discovery that they should focus on; because additional issues even as recently as May 12th keep appearing, issues that could have been raised long ago. For example, you saw two days ago there was a motion filed to double the time for the remaining Zuffa witnesses from seven hours to 14 hours; notwithstanding that the parties have entered into a stipulation on April 25th that two of those depositions would only be seven hours and notwithstanding the fact that they noted that all of these witnesses probably have as much information as the former CEO, Lorenzo Fertitta.

Plaintiffs were able to do Mr. Fertitta in seven hours. I mean, there is a burden on Zuffa as well. And, again, it's probably clear from our papers. I mean, part of the problem is that there were a lot of things set, rescheduled, moved, lack of coordination.

So it is odd now that plaintiffs say that Zuffa has been informing their parties that they don't have to show up. Third parties have actually contacted Zuffa because they're --

THE COURT: I understand that, but everybody's in limbo because you don't know what additional time, if any, you're going to get.

MS. GRIGSBY: Right. Their industrious lawyers looked at the docket and have called us to say, I see that discovery is closed. I've informed them that we are opposing the extension.

But --

THE COURT: I'm not faulting you. I know exactly what you're saying, and you can get in trouble for conducting discovery without leave of Court when it's a Court-imposed deadline so --

MS. GRIGSBY: Exactly.

THE COURT: But now here we are now and we still have a fair amount to do. And they're asking for 60 days to do what can be done.

MS. GRIGSBY: And again, Your Honor, I guess we're asking that you limit it to the things that -- I mean, things that are identified in their earlier papers. I feel like for the third parties, you know, where for whatever reason they did not get documents for years, for literally years, decided to notice the depositions at the last minute. I mean, the Raine Group, they noticed the deposition on April 20th for April 30th, which is a Sunday. You know, plaintiffs should not be able to benefit from the fact that at the last minute they were scrambling to notice all of these third parties.

So we just ask that there are reasonable limits. Rule 45 subpoenas --

THE COURT: And so tell me what you think a reasonable limit is.

MS. GRIGSBY: So we think a reasonable limit is to do the current and former Zuffa employees. We are not going to

oppose that. We think it's reasonable to keep the normal limit in Rule 30 of seven hours, which is the presumption here, especially given the fact that two of the witnesses were 30(b)(6) designees. They've gotten -- and, you know, they've gotten 30(b)(6) testimony for four days.

THE COURT: Did you discuss Mr. Epstein, as I understand it, or "Epstine"? I'm not sure how to pronounce his name. Did you discuss that? Because he went for seven hours and he's one of the deponents that they want again. Has that even been discussed with you?

MS. GRIGSBY: That they want two days?

THE COURT: No. I thought he was deposed already for seven hours. Did they -- at the conclusion of the seven hours did they say, We're not done with this witness, we need some more time with him, or did you find out for the first time when they filed their motion for additional time?

MS. GRIGSBY: We found out the first time on May 12th when we saw a draft of the joint status agenda that was submitted to the Court that plaintiffs were going to seek, you know, 14 hours. So during the deposition not on the record I had conversations with counsel about the fact that they wanted two days. On that particular day, I said, If you go a little bit over the seven hours, we are not opposing, but we are opposing the second day.

We are also opposing -- I mean, again, we will submit

an opposition unless this Court is willing to rule now, but --

THE COURT: I am because we're going to eat up 30 days in briefing on a period of time in which they're asking for 60 days.

MS. GRIGSBY: Right. So this is an apex deposition. They were able to -- I mean, they were asking questions such as what is the business purpose of the champions clause. And I did tell them if they're using their time this way, then I don't think there's a justification for them to take 14 hours with this particular witness. They used one document that they had used with the same witness in the 30(b)(6). So it was discussed with Mr. Epstein.

THE COURT: You believe that they're taking an unreasonable amount of time and they're asking cumulative questions that have already been answered.

MS. GRIGSBY: Exactly, Your Honor, and --

THE COURT: They say that, you know, you're not limited to -- you can ask individual witnesses the same questions that you ask the 30(b)(6) because you might get a different answer from the guy that's binding the corporation than from the person who has percipient knowledge.

MS. GRIGSBY: True. But, Your Honor, I'm just, you know, going under Rule 26(c) and the case law on apex depositions that, you know, there is grounds to ask for a protective order given the fact that, you know, a COO who is --

of a company, of a large company, is a fairly busy individual. And to take the time for him to provide answers that he's -- in fact, he already provided some of these answers in his 30(b)(6) just doesn't show the need for 14 hours worth of questioning.

That is our basis. It's not that we think -- you know, we're worried that he had some personal knowledge that was different. It was just that this is what they're using their time to do.

We actually have a video of one of the last depositions. I don't know if technology's going to allow, but if Your Honor could see some of the questions that are being asked during this time, we just believe that, you know, allowing them 14 hours just because these witnesses happen to be last is unfair.

For example, Sean Shelby had the exact same title as Joe Silva. Lorenzo Fertitta was the CEO of the company. They were -- they were able to do the deposition in seven hours. I mean, this is a last-minute request that has come after the close of discovery. To really impose --

THE COURT: I understand your arguments about that. Now you tell me more specifically, however, how you propose that I should order what can be done in the next 60 days --

MS. GRIGSBY: Sure.

THE COURT: -- if I give them the 60 days they're asking for.

MS. GRIGSBY: Sure. So we'll go back. So the four remaining Zuffa employees for seven hours --

THE COURT: White, Silva, Mersch, and Hendrick?

MS. GRIGSBY: Exactly, Your Honor.

THE COURT: And the Zuffa's custodian of records that you agreed to?

MS. GRIGSBY: Yes, Your Honor.

THE COURT: And the Zuffa 30(b)(6) on fighter compensation that you agreed to?

MS. GRIGSBY: Yes, Your Honor.

THE COURT: And the WME deposition that you agreed to?

MS. GRIGSBY: Yes, Your Honor.

THE COURT: And the Scott Coker deposition that you agreed to?

MS. GRIGSBY: Yes, Your Honor.

THE COURT: All right. And then with respect to the other nonparties, we've got a list of 10 depositions. Two of which are on hold because of litigation in other districts. Two of which they have been tentatively scheduled at least with respect to the deponents and/or their counsel, but haven't been discussed with you.

MS. GRIGSBY: Correct, Your Honor. I mean, it seems like this -- you know, we've agreed AXS TV will await the outcome, but the rest of this is just a wish list. It's not -- even if they were to get 60 days, it's not realistic to complete

it.

THE COURT: And they know that. And that's why I just asked them that. And now I'm asking you. Okay? He's going to have to make choices based on what he can get done and what's more important to the plaintiffs' case. Why shouldn't I allow him an opportunity to do some of this, whatever he can do within a reasonable time, imposing on both sides a good faith obligation to coordinate your respective schedules and to do -- get done what can be done on this list?

MS. GRIGSBY: I mean, Your Honor, I think because the answer for some of these witnesses is that plaintiffs have had quite a bit of time to do this. I mean, there are deadlines for a reason. So, for example, let's use Bob Aaron. They noticed his deposition in January. They got a response from his counsel that he was -- they sent -- served the notice in January. They got a response from his counsel that he was unavailable on May 16th, 2017. There were no follow-up efforts on that account. The various boxing promoters, they've been noticed around the same time. Again, there was no diligence on their part in completing these depositions.

For Robert "Bob" Meyrowitz --

THE COURT: So you want me to say that they don't get anything.

MS. GRIGSBY: No, we want you to say that they get what they've actually diligently pursued during the time frame.

THE COURT: Yeah, but when you get down to brass tacks, these 10 that they've listed in the status report, you're telling me they shouldn't be able to depose any of them because they didn't schedule them or take appropriate action within the time period that was allowed under the plan?

MS. GRIGSBY: Yes, Your Honor. When some of these earlier --

THE COURT: I just want to clarify that that's your position.

MS. GRIGSBY: Yes.

THE COURT: That's what you're telling me. Don't give them anything more on this list because they weren't sufficiently diligent.

MS. GRIGSBY: Yes, Your Honor.

THE COURT: Okay. And I take it that's your same position with respect to the 17 subpoena duces tecum that have been served, but have not been enforced in the face of resistance.

MS. GRIGSBY: Well, I mean, actually there's some exceptions. For example, one championship was --

THE COURT: So you must want him, too.

MS. GRIGSBY: So, again, they have actually tried to enforce, to -- you know, to move to compel these subpoenas. Then we don't object to them being able to do it. It's just the fact that they did nothing. Some of these subpoenas were

served, like Ed Schwartz, in December of 2015. They've done nothing. They've done very, very little.

THE COURT: And we just had oral argument on a motion to quash Bellator in which you wanted all of that information from them, too, and you didn't do anything to compel your subpoena either, did you?

MS. GRIGSBY: Your Honor, as you noticed, we didn't move to compel. We were just opposing the motion to quash. You know, at the end of the day --

THE COURT: Correct, but you didn't do anything to get information that your lawyer just stood up and said is absolutely vital to this case. So both sides -- this is tough. This is hard litigation. You've worked very hard in this case, and I get that. And now you find yourself where you are. And now I have to decide what's a reasonable limitation within a reasonable period of time to get this case ready for trial.

MS. GRIGSBY: Yes, Your Honor.

THE COURT: Okay. And you think that I should just cut them off from the 17 custodian document -- production and from the 10 third-party or nonparty witnesses and just proceed with the ones you agreed that they should be able to take.

MS. GRIGSBY: Well, I mean, I guess we would concede for the document productions, you know, but for the depositions there's actually been a real imposition even on opposing counsel. I mean, we've bought tickets before to travel,

nonrefundable tickets, where plaintiffs have later cancelled the depositions at the eleventh hour. They've represented that certain depositions are still on the schedule when they already knew from the third party that the third party was unavailable.

It's just there should be some limits. You know, we're not asking you to cut them off. We obviously have every interest in them presenting their case because we think we'll win on the merits, but in terms of these various fishing expeditions to, you know, talk to every single third party when they've been unable to do so in a year and a half, it's just very difficult for us to concede that there's the need to do all of this in 60 days when for certain of these items plaintiffs have done nothing.

THE COURT: Okay.

MS. GRIGSBY: And then in terms of the new discovery, again, Your Honor, completely understanding and being sensitive to your concern about them being able to finish up their efforts, the new discovery, it's our position that the new discovery should not be allowed partly because plaintiffs --

THE COURT: Except for one championship.

MS. GRIGSBY: Because they received that information in, you know, April/May of 2017. So, again, we take no position because we understand that plaintiffs, perhaps, did not have the information. But for the other ones -- January Capital, on the certificate of interest it listed January Capital. They've used

January Capital documents since their first 30(b)(6) deposition. I mean, the idea that they've just learned as of May 2017 that January Capital could have information is just not credible.

The same with Showtime Networks. They actually cite in their complaint the fact that Zuffa has had contracts such as with Showtime. All of the information that plaintiffs are using as the basis to take this deposition they've had in their possession. On December 2nd they asked Lawrence Epstein during the 30(b)(6) of acquisitions about the last negotiations with Showtime, and now in May -- we learned this in May that they want to depose Showtime as well.

Vinci Partners, I mean, the other issue there, they've defined the relevant market as you understand in the United States and alternatively in North America. Just unclear what, you know, sending attorneys to Brazil is going to -- you know, whatever relevance this is going --

THE COURT: Your side of the table just told me the world market is relevant and you think that's the -- that's the relevant market.

MS. GRIGSBY: Well, we would have deposed -- if we thought that there was really a lack of value, we would have noticed the depositions ourselves, but in any event, they've had those documents since September of 2016. Yes, it's our view that the market is global. It's not just North America, but that's not their view and they're the ones asking for the

deposition.

And then for Malki Kawa, they have said based on a deposition which took place in the beginning of May they have this new need to depose the third party. And just to be clear, the particular text message is from Malki Kawa to a Zuffa employee. They've had this text message since July of 2016 when the Zuffa employee testified that he didn't know what Malki Kawa meant. Then -- now plaintiffs say, Oh, this is a basis for new discovery. Again, they've had all of this information for almost a year, and in fact they've asked about this same exact negotiation in the 30(b)(6) deposition.

So it's just our position that plaintiffs are coming up with a laundry list, much of which they haven't even presented to Zuffa until May of -- May 12th of 2017.

And for that reason we ask that the Court limit discovery if it's inclined to extend it.

THE COURT: Thank you.

All right. Let me hear from Zuffa why I should give you 14 hours on another last-minute motion that was filed on May the 9th when you were able to complete Mr. Fertitta's deposition in seven hours. Who wants to be on the chopping block for this one?

MR. SAVERI: So I had a lot of input on my way to the lectern, Your Honor.

THE COURT: Mr. Savarese.

MR. SAVERI: Saveri, Your Honor.

THE COURT: Saveri, excuse me.

MR. SAVERI: I appreciate that.

So I was getting up. I just want to make sure I heard your question. What -- do you want me to address the why --

THE COURT: Why do you need 14 hours from all of these people when you were able to complete Mr. Fertitta in seven hours and why I am hearing about it and they're hearing about it for the first time on May 9th?

MR. SAVERI: Well, so let's do those in order. First, I think that the first point I would make is clearly this is a complicated case. There are a lot of documents. All of the cases we cited in our papers in which Courts have expanded or enlarged the deposition time applies --

THE COURT: I clearly have discretion to give you more time. The question is, if you could do Fertitta in seven hours, why can't you do all of these other people if you're really being efficient and you know your case and you're prepared?

MR. SAVERI: Well, so I'd say a couple of things first. Fertitta actually is an apex deposition. He actually is the CEO. And so we took that seriously and we tried to do that as efficiently as possible.

THE COURT: And Dana White is the face of the UFC you're telling me.

MR. SAVERI: And -- but --

THE COURT: Come on. Be serious here. Why do you need it?

MR. SAVERI: Well, because there are many, many documents, many, many text messages. The case covers years of time. It's a complex antitrust case. We will certainly try to do these depositions as efficiently as possible, but clearly this isn't a who-went-through-the-red-light case. This isn't a personal injury case. This is a case where the documents that are relevant to these witnesses. All of these witnesses we understand from the Rule 26 disclosures are going to testify at trial. So we have two -- a couple of things we need to do.

One, we need to elicit the information that we need in order to prove our -- bear the burden to prove our case-in-chief. We also need to address and to determine, so that we don't have a trial by ambush, what these witnesses are going to be able or what they -- how they're going to testify at trial.

So we clearly need in my mind more than seven hours because of the complexity of this case. It is not clear to me that we need the whole 14 hours, and there are certainly ways of trying to accommodate or negotiate something in between a deposition that we -- I think we can agree in a complex case would likely go more than seven hours and two days. The problem -- or the difficulty we have is it's important to note before we take the depositions how much time we have. I think

it's a reasonable thing for the attorney to know when he or she is preparing that deposition how much time he or she has to work with. So just in terms of planning, that's why we need the depositions, to be -- in large we need to know it in advance.

Candidly, Your Honor, I think that we -- as we were getting ready for the end of the case and we fully appreciated what we were dealing with in terms of the documentary record, the text messages, the knowledge that these witnesses would have, and that's partially informed by the depositions that came before, it's clear that these witnesses have more knowledge which is relevant to this case which is -- which reasonably will take more than seven hours to examine the witness on.

And so when we have that come up, perhaps we should have done it a little bit earlier, but we did it in advance of the depositions and we think that's an appropriate time to do that. And frankly, Your Honor, there's no other way for us to address this issue, to do it in advance of these important witnesses, and you can give us the guidance about how much time we have.

Our request is relatively simple. Because of the complexity of the issues for these witnesses, the amount of documents, other information they have, the time period covered, the fact that they are trial witnesses, we think it's reasonable and it's important for us, the plaintiffs who have the burden, to have more than seven hours of testimony on the record.

And we don't need the whole 14 hours. I can promise you that, Your Honor, but we have to -- in order to get -- we need to enlarge the time and we need your guidance from the -- we need your guidance, Your Honor, that we're allowed to go beyond the seven hours. And we'll do the best we can.

If you said we get seven or eight or 10 or whatever the number is, we'll deal with it, but we think it's important to have more time than just the seven hours. That's the request.

And I would also say, we --

THE COURT: And what about Mr. Epstein?

MR. SAVERI: Well, so I took Mr. Epstein's deposition.

THE COURT: Epstein, excuse me.

MR. SAVERI: And a couple -- a couple points. I think it is incorrect that the testimony -- the questioning of Mr. Epstein was cumulative in any significant way. Certainly whenever you ask a number of witnesses who are involved in similar e-mail chains or similar events, similar meetings. That you ask the witnesses the same question. Now, I don't think that is cumulative.

Now, the -- so we need, with respect to Mr. Epstein, some additional time for a couple reasons. First, and I did advise counsel during -- in advance of the deposition and during the deposition that we wanted to have more time.

THE COURT: And she tells me that when you got to the seven hours she said, If you need a little more time, I'm

willing to -- we'll stay late.

MR. SAVERI: Well -- and first of all, Your Honor, we walked into the deposition, and the position was you're only getting seven hours. Now, we made plans and arrangements around that, but we also have -- and so we were only told in the middle of the afternoon, a couple -- an hour or so before the deposition was to end, Hey, we're changing our position. So that feels a little bit like -- it's a little bit of a bait and switch to be told, Hey, you only get seven hours for a deposition. That's all you're going to get. We reserve our rights. And then in the fifth hour, Hey, we're changing the rules. I think that's unfair.

Now, with respect to Epstein, we have an agreement that the deposition will be enlarged because of the -- depending on how the Mercer motion was resolved. So we do have additional time. Frankly, Your Honor, because I prepared for the deposition, I know there are probably 25 or 30 more e-mails that could have been used with Epstein that could easily fill another day. I'm probably going to take the second day of deposition of Mr. Epstein, and I have no interest in just wasting my time for another second day.

But, candidly, he had a big job at this case. While he's not an apex deposition, Mr. Fertitta is the apex, he's an extremely knowledgeable witness who we understand is going to testify at trial.

And so some additional time I think is warranted, and so that's really what we're -- why we would want additional time for Epstein. I don't -- I don't believe we need the full seven hours, but we certainly need more.

THE COURT: All right.

MR. CRAMER: Your Honor, can I address the discovery issue very briefly, the overarching discovery issue?

THE COURT: Well, we're not going to keep doing tag-team argument here. And so --

MR. CRAMER: Mr. Saveri was addressing the 14-hour issue. I just want to get back to the overall scope of the extension, if we're going to get an extension. And I don't intend to go subpoena by subpoena and respond in a granular fashion to the arguments that Ms. Grigsby made about each one because I don't -- there's no motions pending relating to all of those. We would have responses about all of those, but I don't think it's worthwhile.

And I think it points --

THE COURT: No, and it's eaten up the time that you have.

MR. CRAMER: Right.

THE COURT: So I'm not going to do it either.

MR. CRAMER: And I just don't -- I think the best -- the best way to resolve it is to use an analogy. Instead of telling people they can go to dinner here and they can only shop

there when they're on travel, you give them a per diem. You get 150 bucks a day and spend it however you want.

And that's the analogy I would use here. You give us the 60 days, and we spend it however we want. And it's up to us to decide what we need to pursue and what we can't pursue, what we can drop and what we need to pick up.

And rather than trying to -- I can't even understand exactly what line Ms. Grigsby wants, but whatever that line is, we're going to litigate about it. And rather than litigating about the line, just give us the 60 days, and then we have to figure it out ourselves. That's the last point I would say.

One other thing on Mr. Silva. I'm taking Mr. Silva next week. I can do him in 10 hours, if I could get the 10 hours. There's a lot of documents. They're key documents. He's the key -- he's a key figure in the case. He's a matchmaker. He negotiated with dozens and dozens of fighters. There's hundreds of e-mails and texts with Mr. Silva and fighters central to the case. Many of the key documents in the case are Silva either wrote, received, or is part of. And that deposition is going to be very difficult merely because of the number of documents I would need to go through.

And I would address Mr. White. One of the issues why we need more time with Mr. White is that -- is the sheer number of documents, including video that we need to authenticate through Mr. White, and just showing Mr. White --

THE COURT: I thought you were going to take a Zuffa custodian of records for authentication purposes.

MR. CRAMER: That's true, but in order to -- but in order to verify that certain -- that Mr. White's statements in some television show are from Mr. White, we need Mr. White to say, Yeah, that was me and I said that. Otherwise, we would need to go to the television show and each company that produced whatever video that we're looking at, and there's lots of videos of Mr. White.

THE COURT: You haven't even had a discussion with the other side about a stipulation authenticating documents the other side produced in that category?

MR. CRAMER: Some of these documents have not been produced by Zuffa. Some of these documents are clips of video we've taken from the Internet, from television. Mr. White speaks a lot in public. He says lots -- says a lot of things. A lot of that is in the complaint. That's important evidence for us at trial.

And the sheer amount of time it takes to show that to Mr. White and ask him to testify about it would consume a seven-hour deposition. He's one of the most important witnesses in the case. So if we could get the 14 hours with him, I think that is fully justified. That's the last thing I would say.

Thank you, Your Honor.

THE COURT: All right. The plaintiffs' request for an

extension with the discovery cut-off is granted. July 31st, 2017, is the July cut-off with the remaining dates extended 60 days accordingly, including August 31st, 2016, for the class of merits experts.

The plaintiffs will have up to 10 hours with respect to the Zuffa employees whose depositions have been agreed among the parties for deposition time. The parties will make arrangements to have the deponents available over a two-day period, if necessary, subject to a motion to terminate or under Rule 30(d) if you believe that examination is harassing or burdensome or cumulative. And I would encourage counsel, I'm not always available, but if you're in a deposition or if you have a discovery dispute, instead of getting involved in motion practice or instead of arguing whether you get another 30 minutes or you don't get another 30 minutes, call chambers. And if I'm available, I'll resolve it for you on the record during the deposition.

You have your court reporter available, and I do this all the time for people. And I'm happy to do this. I can't always be available. I can't all always be available immediately, but I can typically make myself available during a time slot for which you're going to be taking depositions in various locations.

MR. CRAMER: That will be very helpful, Your Honor. Thank you.

THE COURT: All right. And I'm not going to encourage you to have a bunch of discovery disputes so I'm on the phone with you nonstop for the next 60 days. So -- but I'm just letting you know it's much preferable to motion practice followed up by then a request to retake a deposition or rulings on motions involving answers or instructions not to answer.

MR. CRAMER: Your Honor, simply having that offer I think is very therapeutic. So thank you.

THE COURT: That was my experience when I was on the other side, too.

With respect to the 10 third-party depositions, I'm going to defer decision on the two AXS depositions that the plaintiffs want, Simon and Cuban, until we see where we are after we get a decision or whether it's my decision or whether it's going to be -- it's going to remain in the district. And then we'll address whether, and if so, the timing of those depositions once you find out what you're going to get from the applicable Court.

You'll be able to take the deposition of WME and Mr. Coker, and of the -- of the remaining 10 on your list of nonparties, pick four and you'll get four of those -- of the remaining eight. You'll be limited to four of the remaining eight.

With respect to the list of 17 custodian -- custodians or document depositions for subpoena duces tecum that have been

served, but not yet responded to, pick five and you'll get five of those. So there will be a limitation, except both sides agree on one competition so they won't count on your five.

Clear?

UNIDENTIFIED COUNSEL: Your Honor, was that one championship?

THE COURT: Yeah. Did I mispronounce it or is it --

MR. CRAMER: I think you said one competition.

THE COURT: Oh. Sorry. Yes. One championship. You both agree on one championship so they don't count on your five limit on the list of 17 that you want, but you'll be limited to five plus one championship. And you'll be limited to four, not counting Cuban and Simon, while we await the decision on the underlying merits.

MR. CRAMER: What about Coker?

THE COURT: I've said you've got those.

MR. CRAMER: Okay.

THE COURT: Both sides agree with that. You got WME. You got Coker. I'm just talking the ones they disagree with you on. You want 10. You're getting four.

MR. CRAMER: Your Honor, if I may. There is a witness named Robert Meyrowitz who I'm just scanning through this list -- oh, he is. He's No. 4.

THE COURT: He's on your list.

MR. CRAMER: Thank you. Thank you.

THE COURT: And with respect to the new discovery, again, I'm not -- I'm not going to allow that and except for the one championship discovery of Matt Hume or whatever designee they pick.

All right. Do either side believe -- does either side -- I'm getting tired. Can you tell?

MS. GRIGSBY: Your Honor, sorry. We actually -- it seems to me there was another dispute between the parties with respect just to telegraph --

THE COURT: Go ahead, Ms. Grigsby.

MS. GRIGSBY: So there appears to be another dispute between the parties as to the Mersch deposition. Plaintiffs have -- do not want to schedule the Michael Mersch deposition because they believe that there are relevant --

THE COURT: They got other text issues. I got that.

MS. GRIGSBY: Right, but -- and so they've actually sent a subpoena to -- we've agreed to accept the subpoena for ESI for Mr. Mersch's phones. The subpoena that plaintiffs sent was actually a subpoena for all documents -- Zuffa documents for the relevant time period, which just so you know and I think it may be in here, you know, we object to given the fact --

THE COURT: I understand that. They're going to schedule it. You're going to give them what they're going to get it and -- what you're going to give them. If they dispute and I think it's unreasonable, it's going to be on you to make

him available a second time. So be reasonable. If I don't, then they're going to live with what they got.

So do not wait, hold off on -- you know, you think they held back on you, they didn't give you what you needed to take a meaningful deposition, we'll fuss about that later, but do not hold off saying there's any more things that need to be decided or you need to get more stuff before you finish what I've just allowed you to do. And we'll take up if one side or the other hasn't met an obligation and what the consequences of that are if and when it happens. Okay?

MS. GRIGSBY: All right. Thank you, Your Honor.

THE COURT: I understand. We're beyond waiting for the next thing, the next thing, and the next thing to happen. So, all right, folks. Does either side want a follow-up status conference or will that take -- be too time consuming and take up some of the deposition days?

MR. CRAMER: I think it might be a good idea to get one on the calendar. If we don't have any issues, then we can cancel it.

THE COURT: Well, and that's kind of my thought is if we set one assigned, then if we do have some disputes, we can take care of them and try to --

MR. SAVERI: Your Honor, I think that's a good idea with the extension. It probably would make sense to me if we got in to see you in advance of that date just to kind of --

THE COURT: Yes, of course. That's why I was thinking about 30 days from now.

MR. SAVERI: Yeah. That would be great.

THE COURT: So we still have some time to maneuver if --

MR. SAVERI: Yeah, that makes sense.

THE COURT: Because I'm sure everything's just going to go glassine smooth.

All right. Mr. Miller, what do we have in approximately 60 days? Don't make it the 4th of July.

COURTROOM ADMINISTRATOR: I just noticed that was Tuesday, Your Honor, the 4th of July. Let's see. Your Honor, we do have the afternoon of Thursday, July 6th, available. Your Honor does have some hearings in the morning. Or, Your Honor, we do have -- well, I hate to hesitate -- to schedule anything on Monday, July the 3rd, in case anyone's traveling. Thursday, July 6th, Your Honor, anything past 11 o'clock a.m. is available on the Court's calendar.

THE COURT: Does that work for you folks?

MR. SAVERI: July 6th sounds good for us.

UNIDENTIFIED COUNSEL: The afternoon helps with the travel also.

THE COURT: That's fine. I tried to do that the last time and none of -- it kind of shifted.

Yes, Ms. Grigsby.

MS. GRIGSBY: So I think we actually have a conflict on our end. Would it be possible to do it the following week?

THE COURT: All right. Mr. Miller, is that my duty week or is that my dark week?

COURTROOM ADMINISTRATOR: Your Honor, that is the Court's dark week.

THE COURT: Okay. So that -- we share courtrooms because there are more judges than there are courtrooms. So that means I don't have a physical courtroom, but I'm sure we can find one. Does Tuesday, July 11th, work for everybody?

MS. GRIGSBY: All right. I'm in court on another matter on July 11th, but --

THE COURT: Okay. Let's go off the record for a half a second and let's pick a date that week that everybody can work on.

(Whereupon proceedings concluded at 12:21 p.m.)

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I, Patricia L. Ganci, court-approved transcriber, certify that the foregoing is a correct transcript transcribed from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ PATRICIA L. GANCI — 6/9/2017

Patricia L. Ganci — Date